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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 370

J. W. ALFORD, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 21, 1930

CERTIORARI GRANTED OCTOBER 20, 1930

(35,292)

(35,292)

SUPREME COURT OF THE UNITED STATES

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Names and Addresses of Attorneys.

For Appellant:

LEO R. FRIEDMAN, Esq.,
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For Appellee:

S. W. McNABB, Esq.,
United States Attorney.

P. V. DAVIS,
Deputy United States Attorney.

GWYN S. REDWINE,
Deputy United States Attorney, Federal Building, Los Angeles, California.

United States of America, ss:

The President of the United States,

To UNITED STATES OF AMERICA

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the SOUTHERN DISTRICT District of CALIFORNIA, CENTRAL DIVISION wherein J. W. ALFORD is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. SAWTELLE United States DISTRICT Judge for the SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION this 3rd day of August, A. D. 1929

Wm H Sawtelle

United States District Judge.

[Endorsed]: Copy of the within citation received this 3rd day of August, 1929. S. W. McNabb, Donald Armstrong, Attorneys for United States. No. 9534-M United States District Court For the Southern District of California, Central Division J. W. Alford Appellant vs. United States of America Citation on Appeal Filed Aug 3 1929 R. S. Zimmerman, Clerk Louis J. Somers Deputy

No..... Filed.....

Viol: Section 215 Federal Penal Code.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California on the second Monday of July in the year of our Lord one thousand nine hundred and twenty-eight:

The grand jurors for the United States of America, impaneled and sworn in the Southern Division of the Southern District of California and inquiring for the Southern District of California, upon their oath present:

That

J. W. ALFORD,

hereinafter called the defendant, whose full and true name, other than as herein stated, is to the grand jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: prior to the several acts of mailing of letters hereinafter alleged, did devise a scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises, from Bessie E. McCluggage, G. R. McNeil, Edith E. Skoog, John R. Gordon, Charles E. Hood and Madolin B. Hoch, and from other persons too numerous to mention, including the public generally, all of said persons being hereinafter referred to in this indictment as the persons to be defrauded;

It was a part of said scheme and artifice that the defendant should and he did engage in business in Los Angeles, California, and in other places in the United States under the fictitious firm name and style of J. W. ALFORD & COMPANY.

It was further a part of said scheme and artifice that the defendant should and on the 17th day of January, 1927, he did obtain an option to purchase approximately fifty-four sections of land in townships three and four, range three east, in Cimarron County, Oklahoma which said option provided that the defendant would obtain title to the first sixteen hundred eighty acres of said land upon the payment of $25,200.00 within thirty-one days from the execution of said option; the option further provided that the defendant could obtain title to the remaining acreage described in said option upon the payment in addition to the said $25,200.00 of an additional $282,000.00.

It was further a part of said scheme and artifice that the defendant would not exercise the option to purchase any of the land hereinbefore described nor to obtain title to any part thereof.

It was further a part of said scheme and artifice that the defendant should and he did, without having title thereto, sell and offer for sale parcels and tracts of land from and out of the tract of land hereinbefore described and to which he had an option as aforesaid.

It was further a part of said scheme and artifice that he should and did pretend and represent to the persons to be defrauded that should the persons to be defrauded pay for the parcels and tracts of land included in the tract hereinbefore described and to which the defendant had an option as aforesaid, that he, the said defendant, would

deliver to the persons to be defrauded a grant deed giving them fee title to the land paid for by them as aforesaid, when in truth and in fact the defendant did not intend to and did not in any instance deliver a deed to any of the persons to be defrauded who had paid the said defendant moneys in exchange for parcels and tracts of land included in the tract hereinbefore described and to which the defendant held an option as aforesaid.

It was further a part of said scheme and artifice that the defendant should and did pretend and represent to the persons to be defrauded that the parcels and tracts purchased by the persons to be defrauded from the said defendant as aforesaid was potential oil land and was land suitable for agricultural purposes.

It was further a part of said scheme and artifice that the defendant should and did pretend and represent to the persons to be defrauded that he, the said defendant, would spend $300,000.00 in drilling oil wells on the tract of land upon which the defendant had an option and from which he was selling tracts and parcels of land to the persons to be defrauded as aforesaid, when in truth and in fact the defendant did not nor did he intend to spend $300,000.00 in drilling oil wells on said tract of land or any other sum nor did he intend to drill an oil well or oil wells on said tract of land.

It was further a part of said scheme and artifice that the defendant should and he did represent to the persons to be defrauded after they had purchased the parcels and tracts of land from the defendant as aforesaid that the prospect for discovering oil in the vicinity of and on the land so purchased by the persons to be defrauded from the said defendant was not what the defendant had ex-

pected it to be at the time he sold parcels and tracts of land to the persons to be defrauded.

It was further a part of said scheme and artifice that the defendant should and he did represent to the persons to be defrauded after they had purchased the parcels and tracts of land from the defendant aforesaid that he, the said defendant, had organized a "Ten Way To Win Syndicate" for the purpose of protecting the persons to be defrauded and that he, the said defendant, would give the persons to be defrauded who had purchased tracts and parcels of land from the said defendant as aforesaid interests in the said "Ten Way To Win Syndicate" in an amount equal to the amount that the persons to be defrauded had invested in the tracts and parcels of land purchased from the said defendant as aforesaid.

It was further a part of said scheme and artifice that the defendant should represent to the persons to be defrauded who had purchased the tracts and parcels of land as aforesaid from the defendant that the "Ten Way To Win Syndicate" would own ten one thousand acre tracts of land widely separated from each other; that in the center of each tract an oil well would be drilled; that the expense of drilling said wells would be met by selling acreage offsetting the wells to be drilled by the defendant for the "Ten Way To Win Syndicate" as aforesaid; that the said defendant had secured drillers to drill the said oil wells for the "Ten Way To Win Syndicate" who had promised not to demand any compensation for their services until the said wells had been drilled to a depth of 4500 feet.

It was further a part of said scheme and artifice that the defendant should not and he did not, nor did he intend

to secure any leases of any land for any purpose for the said "Ten Way To Win Syndicate".

It was further a part of said scheme and artifice, and in furtherance thereof, that the defendants would unlawfully, fraudulently and knowingly make false pretenses, representations and promises to the said persons to be defrauded, through and by means of divers printed circulars, newspapers, magazines, advertisements, letters and publications in substance and effect as follows:

1. That should the persons to be defrauded purchase a tract or parcel of land from the said defendant in the tract of land hereinbefore described located in Cimarron County, Oklahoma, and should the persons to be defrauded pay the purchase price of said parcel or tract of land so purchased by them that he, the said defendant, would deliver to the said persons to be defrauded a grant deed to said parcels or tracts of land, when in truth and in fact and as the defendant then and there well knew, he would not and could not deliver a grant deed to transfer title to any of the persons to be defrauded or to anyone to any of the land sold by him to the persons to be defrauded.

2. That he, the said defendant, was spending the sum of $300,000.00 in drilling oil wells on the tract of land which the persons to be defrauded had purchased from the defendant located in Cimarron County, Oklahoma, when in truth and in fact and as the defendant then and there well knew, the defendant was not spending nor did he spend the sum of $300,000.00 or any other sum in drilling oil wells on the tract of land aforesaid or any other sum of money nor did he drill or commence to drill any oil wells on said tract of land.

3. That should the persons to be defrauded exchange the land purchased by them from the defendant in Cimarron County, Oklahoma for interests in an association organized by the defendant and known as the "Ten Way To Win Syndicate" that they, the persons to be defrauded, would be making a profitable investment, when in truth and in fact and as the defendant then and there well knew, the persons to be defrauded would not be making a profitable investment.

5. That the defendant would purchase for the "Ten Way To Win Syndicate" oil leases on ten one thousand acre tracts widely separated from each other, when in truth and in fact and as the defendant then and there well knew, the defendant did not intend to nor did he purchase any tracts of land for any purpose for the "Ten Way To Win Syndicate".

6. That the expenses of drilling the wells on the leases to be acquired by the "Ten Way To Win Syndicate" could be obtained by selling offset acreage to the well to be drilled by the "Ten Way To Win Syndicate", when in truth and in fact and as the defendant then and there well knew, the defendant did not intend to nor did he well any offset or other acreage to drill any oil wells for the "Ten Way To Win Syndicate" or for any other purpose or at all.

That by means of the aforesaid scheme and artifice to defraud and to obtain money and property from the persons to be defrauded by means of the aforesaid false representations, pretenses and promises the defendant intended to, and did, obtain large sums of money from the persons to be defrauded and intended to and did appropriate and convert to his own use and benefit a large part

of the said sums of money, the exact amounts being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said defendants on the 18th day of May, 1927, at Los Angeles, Los Angeles County, California, in said Southern Division of said Southern District of California, for the purpose of executing said scheme and artifice unlawfully and feloniously, did knowingly place in the United States Post Office there, to be sent and delivered by the Post Office Establishment of the United States, a certain letter, in a postpaid envelope addressed to Bessie E. McCluggage, at 1184 N. Alexandria Ave., Los Angeles, Calif., to-wit: a letter dated May 18, 1927, which was of the following tenor:

"Dear Madam:

We would like to discuss with you personally, a matter of importance and with that end in view, would request that you drop in at our offices at your earliest convenience and see either the writer or Mr. Jackson or Mr. Russell.

Thanking you in advance for your attention to this request, we are

Very truly yours,

J. W. ALFORD & CO.

JWA:DW

By J. W. Alford"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter:

That the defendant, on May 24, 1927, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in said Southern Division of said Southern District of California, unlawfully and feloniously did knowingly, place in the United States Post Office at Los Angeles aforesaid, to be sent and delivered by the Post Office Establishment of the United States to one Charles E. Hood at 2601 Cherry at Willows, Long Beach, Calif., a certain letter in a postpaid envelope, to-wit: a letter dated May 24, 1927, which began with the following words:

"Dear Sir:

We wrote you several days ago, requesting that you stop in at our offices, but not having heard from you, it is possible the letter may have gone astray."

and ended with the following words:

"May we not have the pleasure of talking with you at your earliest convenience this week?

Cordially yours,

J. W. ALFORD & CO.

JWA:DW By J. W. Alford"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendant, on July 11, 1927, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in said Southern Division of said Southern District of California, unlawfully and feloniously did knowingly place in the United States Post Office at Los Angeles aforesaid, to be sent and delivered by the Post Office Establishment of the United States, a certain letter in a postpaid envelope addressed to Mr. G. R. McNeil 1119 — 28th Street San Diego, California, to-wit: a letter dated July 11, 1927, which began with the following words:

"Dear Sir:

I am just in receipt of a letter from you inclosing a check in the amount of $20.00, which you state covers a payment on your contract."

and ended with the following words:

"Hoping to be able to serve you at some future date, we are

Very sincerely yours,
J. W. ALFORD & COMPANY

JWS/s
encl.

By J. W. Alford"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendant, on May 18, 1927, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in said Southern Division of said Southern District of California, unlawfully and feloniously did knowingly place in the United States Post Office at Los Angeles aforesaid, to be sent and delivered by the Post Office Establishment of the United States, a certain letter, in a postpaid envelope addressed to Bessie McCluggage, 1184 N. Alexandria Ave., Los Angeles, Calif., to-wit: a letter dated May 18, 1927, which was of the following tenor:

"Dear Madam:

We would like to discuss with you personally, a matter of importance and with that end in view, would request that you drop in at our offices at your earliest convenience and see either the writer or Mr. Jackson or Mr. Russell.

Thanking you in advance for your attention to this request, we are

Very truly yours,

J. W. ALFORD & CO.

JWA:DW By J. W. Alford"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations alleging the mailing of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendant, on January 12, 1928, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in said Southern Division of said Southern District of California, unlawfully and feloniously did knowingly place in the United States Post Office at Los Angeles aforesaid, to be sent and delivered by the Post Office Establishment of the United States, a certain letter, in a postpaid envelope addressed to Miss Edith E. Skoog 1129 S. Mariposa, Los Angeles, to-wit: a letter dated January 12, 1928, which began with the following words:

"Dear Miss Skoog:

Not having heard from you, it is possible that the letter which I wrote you some days ago has gone astray."

and ended with the following words:

"Thanking you in advance for your earliest attention to this matter, and with appreciation for your patience, support and confidence, I am

Very sincerely yours

J. W. Alford

JWA/h J. W. Alford"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SIXTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendant, on January 20, 1928, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in said Southern Division of said Southern District of California, unlawfully and feloniously did knowingly place in the United States Post Office there, to be sent and delivered by the Post Office Establishment of the United States, a certain letter, in a postpaid envelope addressed to Mr. John R. Gordon, 1129 So. Mariposa, Los Angeles, Calif., to-wit: a letter dated January 19, 1928, which began with the following words:

"Dear Mr. Gordon:

I have your letter of even date regarding the several letters which you have written me and to which you state that you have never had a reply."*22*

and ended with the following words:

"Trusting that you will call with your papers at your earliest convenience, I am,

Very truly yours,

J. W. ALFORD

JWA/M

J. W. ALFORD & CO. INC."

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SAMUEL W. McNABB,
United States Attorney,
Donald Armstrong
Assistant United States Attorney.

[Endorsed]: No. 9534-M United States District Court Southern District of California Southern Division The United States of America vs. J. W. Alford Indictment Viol: Section 215 Federal Penal Code A true bill, W. H. Harrison Foreman. Filed Jan 3 1929 R. S. Zimmerman, Clerk By Murray E. Wire Deputy Clerk Bail, $3500 00 1/21/29 Deft J. W. Alford arr, plea n/g—cont'd for settg 4/ 1/29 " " " set for trial June 11, 1929. R. S. Zimmerman, Clerk U. S. District Court, Southern District of California By Lee A. Quinn, Deputy

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IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA. Southern Division.

THE UNITED STATES OF AMERICA,
vs. No. 9534-M
J. W. ALFORD,
Defendant.

MOTION FOR BILL OF PARTICULARS.

Now comes the defendant, J. W. Alford, by H. H. Harris, Esq., his attorney, and moves the above entitled

Court for an order directing The United States District Attorney for the Southern District of California, to furnish to the defendant a bill of particulars in order that said defendant may know and be particularly informed of the following matters, to wit:

1. What said alleged scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises consisted of in its entirety.

2. What were the false or fraudulent pretenses, representations or promises used by or intended to be used by defendant in said scheme and artifice to obtain money and property.

3. The names of the other persons too numerous to mention from whom the defendant devised a scheme and artifice to obtain their money and property.

4. What was the nature of the business that defendant engaged in in Los Angeles, California, and in other places in the United States under the name and style of J. W. Alford & Co.

5. In what other place in The United States other than Los Angeles, California, did the defendant engage in business under the name and style of J. W. Alford & Co.; from whom did the defendant on or about the 17th of January, 1927, obtain an option of approximately fifty-four sections of land in Cimarron County, Oklahoma.

6. What were the full terms and conditions of the option to purchase said land in Cimarron County, Oklahoma which defendant was alleged to have obtained on the 17th of January, 1927.

7. What were the names of the persons to whom defendant sold or offered for sale any parcels or tracts of

land from and out of the tract described in said indictment as being in Cimarron County, Oklahoma.

8. What land he sold to any persons out of the tract of land described as being in Cimarron County, Oklahoma.

9. The names of any persons who bought and paid for any land in the tract described as being in Cimarron County, Oklahoma.

10. The names of any persons who were entitled to deeds to any land in Cimarron County, Oklahoma.

11. The names of any persons who demanded any deeds to any land in Cimarron County, Oklahoma.

12. The names of any persons who had delivered to said defendant any moneys in exchange for parcels or tracts of land in Cimarron County, Oklahoma and the amount of money paid by each thereof.

13. The names of the persons to whom defendant represented that they had purchased parcels or tracts of land from the defendant in Cimarron County, Oklahoma or that the prospect for discovering oil in the vicinity of or on the lands so purchased was not what defendant had expected it to be.

14. The names of the persons to whom defendant represented that he, the defendant had organized a "Ten Way to Win Syndicate" for the purpose of protecting the persons to be defrauded and that he would give such persons who had purchased land interests in said syndicate equal to the amount they had invested.

15. The times at which and dates on which the defendant represented that he had organized a "Ten Way to Win Syndicate" and said other things as in the last preceding paragraph set forth.

16. The names of the persons from whom defendant obtained large or any sums of money by means of the scheme and artifice set forth in each and all of the counts of the indictment.

17. The amount of money received by defendant from any persons by means of the scheme and artifice set forth in each and all of the counts of the indictment.

18. When the defendant devised the scheme or artifice set forth in each or all of the counts of the indictment herein.

19. When the scheme and artifice set forth in the indictment terminated.

20. The full text and contents of the letter set forth in part in the second count of said indictment.

21. The full text and contents of the letter set forth in part of the third count of said indictment.

23. The full text and contents of the letter set forth in part of the fifth count of said indictment.

23. The full text and contents of the letter set forth in the sixth count of said indictment.

24. The times when and the places where and the persons to whom any and all of the pretenses and representations set forth in the indictment as having been made by defendant were made.

That said aforesaid mentioned matters relate to general allegations contained in the indictment on file herein and more particular and specific knowledge of such matters are necessary to said defendant on his trial and without such particular knowledge said defendant will be unable to properly prepare his defense thereto or to prepare any defense at all.

This motion is made upon the indictment on file herein and upon the affidavit of defendant served and filed herewith and attached hereto.

Respectfully submitted,

H H Harris

Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA Southern Division.

THE UNITED STATES OF AMERICA,

vs.

J. W. ALFORD,

Defendant.

No.

AFFIDAVIT OF J. W. ALFORD.

STATE OF CALIFORNIA,) ss.
County of Los Angeles)

J. W. ALFORD, being first duly sworn, deposes and says:

That he is the defendant in the above entitled action; that the trial of the above entitled action has been set for the 11th day of June, 1909; that he is in possession of a copy of the indictment on file in the above entitled action and that he had read said indictment.

That said indictment purports to charge him with a violation of section 215 of the Criminal Code of the United States; that said indictment contains and is almost entirely

composed of allegations of acts alleged to have been committed by defendant; that these acts are alleged in general terms and the indictment fails to allege the time, place or circumstances necessary to an identification of any of the acts so alleged; that he has been informed by his attorney, H. H. HARRIS, ESQ., and upon such information believes and alleges that unless he is furnished with a bill of particulars which shall particularly and specifically inform him of the exact time when said acts were committed, of the particular place where said acts were committed and of the circumstances surrounding the commission of these acts that he will be unable to properly prepare his defense or to prepare any defense at all.

J. W. Alford

Subscribed and sworn to before me this 21st dav of May, 1929.

[Seal] Bess B. Bradbury.

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires March 11, 1931

[Endorsed]: No. 9534-M In the District Court of the United States Southern District of California, Southern Division The United States of America vs J. W. Alford Defendant. Motion for Bill of Particulars Filed May 21 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk H. H. Harris, Bank of Italy Bldg., Attorney for defendant.

At a stated term, to wit: The January, Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in

the City of Los Angeles, on Monday the 27th day of May, in the year of our Lord one thousand nine hundred and twenty-nine.

Present;

The Honorable WM. P. JAMES, District Judge.

United States of America, Plaintiff)
)
vs.) No. 9534-M Cr.
)
J. W. Alford, Defendant)

This cause coming before the Court for hearing on the motion of defendant J. W. Alford for a Bill of Particulars; Donald Armstrong, Assistant United States Attorney, appearing as counsel for the plaintiff, and H. H. Harris, Esq., appearing as counsel for the defendant, the motion of defendant J. W. Alford for Bill of Particulars is presented, and the said Donald Armstrong, Esq., having thereupon stated that there are no matters other than the facts and things described in the indictment which he will seek to prove in establishing the charge, either as to the character of the fraudulent scheme, as alleged, or any false representations or pretenses connected therewith; the motion, therefore, is denied as to specifications 1 and 2; specification 6 is denied; specifications 10 and 11 are allowed; specification 18 is allowed; specification 19 is denied. Specifications 20, 21 and 23 are allowed, the United States Attorney stating he will furnish same. Specification 24 is denied. No other specifications, set forth in the motion, were presented by the defendant.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

UNITED STATES OF AMERICA, Plaintiff, vs. J. W. ALFORD, Defendant.	No. 9534-M BILL OF PARTICULARS.

Pursuant to Petition of Defendant for a Bill of Particulars and upon Order of the above entitled court, entered May 27, 1929, the plaintiff herein furnishes the defendant with the following Bill of Particulars:

SPECIFICATION TEN.

The following persons who were entitled to deeds:

Bessie McCluggage,
G. R. McNeil,
Dr. T. L. Mueller,
Jennie S. Mueller,
Wm. Stromberg,
Madalin B. Hoch,
Newton L. Aldrich,
Josephine D. Mein.

SPECIFICATION ELEVEN.

The following persons demanded deeds:

Bessie McCluggage,
G. R. McNeil,

Dr. T. L. Mueller,
Jennie S. Mueller,
Wm. Stromberg,
Madalin B. Hoch,
Newton L. Aldrich.

SPECIFICATION EIGHTEEN.

Defendant devised the scheme and artifice set forth in each count of the indictment on or about October 1, 1927, provided he did not enter into negotiations with Guy W. Slack for the purchase of the land described in the indictment on or before that date.

SPECIFICATION TWENTY.

The letter described in Count Two of the indictment is in words and figures as follows, to-wit:

"J. W. ALFORD & COMPANY
Petroleum Properties
Lincoln Building
Los Angeles

Member
Los Angeles
Chamber of Commerce

Associate Member
Los Angeles
Realty Board

May 24, 1927.

Mr. Chas. E. Hood,
2601 Cherry at Willows,
Long Beach, Calif.
Dear Sir:

We wrote you several days ago, requesting that you stop in at our offices, but not having heard from you, it is possible the letter may have gone astray.

Having in mind the best interests of our clients and a desire to keep them fully informed regarding all phases of

their investments, we would like to discuss with you personally, a plan which we have perfected covering your holdings and one which we believe will be greatly to your benefit to seriously consider from a profit standpoint.

Either Mr. Jackson, Mr. Russell or the writer will be at your service from 9 A. M. to 9 P. M. every day this week.

May we not have the pleasure of talking with you at your earliest convenience this week?

Cordially yours,

J. W. ALFORD & CO.

JWA:DW BY J. W. ALFORD."

SPECIFICATION TWENTY-ONE.

The letter described in Count 3 of the indictment is in words and figures as follows, to-wit:

"J. W. ALFORD & COMPANY
Petroleum Properties
Lincoln Building
Los Angeles

Member Los Angeles Chamber of Commerce

Associate Member Los Angeles Realty Board

July 11, 1927.

Mr. G. R. McNeil,
1119—28th Street
San Diego, California

Dear Sir:

I am just in receipt of a letter from you inclosing a check in the amount of $20.00, which you state covers a payment on your contract.

In looking up the records, I find that you were considerably delinquent in payments on your contract and we

cancelled same last month, writing you at that time as follows:

'In as much as you have failed to live up to the terms and conditions of your signed contract for the purchase of acreage in Cimarron County, Oklahoma, we have this date cancelled said contract and applied such moneys as have been paid thereon against expenses which were incurred in your behalf as per instructions embodied in the said contract, copy of which you have in your possession.'

We therefore return your check for $20.00 and consider the matter a closed issue.

It is with regret that we had to pursue this course, but we had considerable money tied up in these properties and the expenses entailed in carrying a considerable number of delinquencies are greater than any well managed business should assume.

Hoping to be able to serve you at some future date, we are

Very sincerely yours,
J. W. ALFORD & COMPANY.
BY J. W. ALFORD."

JWA/s
encl.

SPECIFICATION TWENTY-THREE.

The letter described in the 6th Count of the indictment is in words and figures as follows, to-wit:

"J. W. ALFORD & CO.
613 Chester Williams Bldg.
Fifth and Broadway
Los Angeles, Calif.

January 19, 1928

Mr. John R. Gordon,
1129 So. Mariposa
Los Angeles, Calif.

Dear Mr. Gordon:—

I have your letter of even date regarding the several letters which you have written me and to which you state that you have never had a reply.

In this connection, permit me to state that I have written you on three different occasions requesting you to call for your certificates and to bring all of your contracts, receipts and agreements with you. Also, I have phoned your residence on numerous occasions, but never seem to catch you at home. In fact I have just put the phone down and am going to try this letter.

You must have received the last letter I wrote, or you would not know the new address of 813 Chester Williams Bldg.

Trusting that you will call with your papers at your earliest convenience, I am

Very truly yours,

J. W. ALFORD.

JWA/M J. W. Alford & Co. Inc."

DATED this 8th day of July, 1929.

SAMUEL W. McNABB,
UNITED STATES ATTORNEY.

Donald Armstrong
DONALD ARMSTRONG,
Assistant United States Attorney.

[Endorsed]: No. 9534-M In the District Court of the United States for the Southern District of California. Central Division. United States of America, Plaintiff, vs. J. W. Alford, Defendant. Bill of Particulars. Filed Jul 9 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

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At a stated term, to wit: The January Term, A. D. 1929, of the District Court of the United States of America, within and for the Central Division of the Southern

District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 18th day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

(Calendar of Judge Paul J. McCormick, called by Judge Sawtelle)

United States of America, Plaintiff, vs. J. W. Alford, Defendant.	No. 9534-M Crim.

This cause coming before the Court for trial, Donald Armstrong, Assistant United States Attorney, appearing as counsel for the Government, the defendant being present with his attorney Leo R. Friedman, Esq., and Ray E. Woodhouse and C. W. McClain being present as official stenographic reporters of the testimony and the proceedings; respective counsel answer ready for trial, whereupon defendant's counsel moves the Court to require the Government to elect as to which count it will proceed to trial on, the first count or the fourth count, and counsel for the Government having thereupon stated that he will proceed on count one and that count four may be dismissed, it is by the Court so ordered and count four of the charge herein is dismissed; and the Court having ordered that a jury be impanelled herein; the following twelve names are drawn from the jury box, to-wit: Bruce R. Young, Jr., Wm. A. Robb, Glen E. Arbogast, G. E. Meyer, Wm. M. Eason, Wm. W. Gibbs, Jr., P. W. Quinby, Wm. Neil

Campbell, W. F. Ball, Edgar F. Twomey, Duncan S. McEwan and Gordon Warren; and the aforenamed jurors having been called, and having taken their seats in the jury box, a statement of the charge herein is made by Donald Armstrong, Assistant United States Attorney, to the said jurors, and they are examined for cause by the Court, and thereafter by Donald Armstrong and Leo R. Friedman, Esqs., respectively, whereupon, Glen E. Arbogast and Gordon Warren are excused on peremptory challenges by the defendant, and it is ordered that two more names be drawn from the jury box, and the names Walter E. Brimhall and Walter H. Comstock are drawn, and the said two prospective jurors having been called and examined for cause by the Court, the said Walter E. Brimhall is excused on peremptory challenge by the defendant, and thereupon the Court having ordered that one more name be drawn from the jury box a name is drawn therefrom, being that of Joel F. Wood, and the said Joel F. Wood is called and having been examined and passed for cause, the jurors now in the jury box are accepted, and by order of the Court are sworn in a body as the jury to try this cause, the names of those so sworn being as follows, to-wit:

THE JURY:

Bruce R. Young, Jr.	Joel F. Wood
Wm. A. Robb	P. W. Quinby
Walter H. Comstock	Wm. Neil Campbell
G. E. Meyer	W. F. Ball
Wm. M. Eason	Edgar F. Twomey
Wm. W. Gibbs, Jr.	Duncan S. McEwan

Witnesses subpoenaed by the defendant, and not by the Government, are excused from attendance until July 23rd,

1929, and thereupon the Indictment is read to the jury by the clerk, and hereafter an opening statement for the Government is made by Donald Armstrong, Esq., as to what the Government expects to be able to prove by the evidence to be introduced.

Guy W. Slack is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibit is offered and admitted in evidence for the Government, to-wit:

U. S. Ex. No. 1: Original agreement—dated Jan. 17, 1927 between Guy W. Slack and J. W. Alford, consisting of 4 pages and blue cover.

and counsel for the defendant having consented to the substitution of copy of agreement in lieu of original admitted as U. S. Ex. No. 1, and that original may be withdrawn, the following exhibit is offered and marked for identification, to-wit:

U. S. Ex. No. 2 for Ident: Plat

and said witness Guy W. Slack testifies on cross-examination conducted by Attorney Friedman, and at this time the following exhibit is offered and marked for identification for the defendant, to-wit:

Defendant's Ex. A, for Ident: Agreement dated 5/2/27

At the hour of 11:50 o'clock a. m., the Court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instruction of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the

merits of the trial until it is finally submitted to them, and excuses the jury until the hour of 2 o'clock p. m.; and thereupon the jury having left the court room, counsel argue to the Court relative to admissability of Defendant's Exhibit A, for Identification—Agreement dated 5/2/27, and by order of the Court said exhibit is admitted in evidence, and is marked Defendant's Exhibit A.

At the hour of 12:15 o'clock a. m., a recess is declared to the hour of 2 o'clock p. m., at which time court reconvenes, and the jury being now present, and all others appearing as before, it is ordered that the trial be proceeded with, and Guy M. Slack resumes the witness stand and testifies further on redirect examination conducted by Donald Armstrong, Esq., and is subjected to recross-examination conducted by Leo R. Friedman, Esq., and at this time Defendant's Exhibit B is offered and admitted in evidence,

Defendant's Ex. B: Orig. letter dated 5/2/27—Guy W. Slack to J. W. Alford

J. St. Paul White is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and in connection with his testimony, the following exhibits are offered and admitted in evidence, to-wit:

U. S. Ex. No. 2: Duplicate orig. of agreement—dated 2/14/27 and between J. St. Paul White & J. W. Alford consisting of 5 pages.

" " " 3: Grant deed—original—J. W. Alford and Vera Forbes Alford—dated 3/1/-27 (per stipulation and order orig. withdrawn and ret'd to wit. White, and photo. copy is substituted therefor)

and said witness is cross-examined by Attorney Friedman, and the following Defendant's exhibits are offered and admitted in evidence, to-wit:

Defendant's Ex. C: Telegram dated 4/29/27—(2 pgs) Alford to White.

" " D: Telegram dated 4/30/27—White to Alford

" " E: Telegram (2 pgs) dated 4/30/27—White to Alford

" " F: Telegram dated 4/30/27—White to Alford

and the following exhibit is offered and marked for identification, to-wit:

Defendant's Ex. G, for Ident: Document dated 2/14/27 between White and Alford unexecuted, consisting of 5 pages.

Dorothy C. Webber is called and sworn and testifies for the Government, and in connection with her testimony the following exhibits are offered and marked for identification, to-wit:

U. S. Ex. 4, for Ident: Orig. letter dated 5/18/27—J. W. Alford to Bessie E. McCluggage and envelope with canc stamp thereon.

" " 5, " " Orig. letter—J. W. Alford to Chas. E. Hood dated 5/24/27.

" " 6, " " Orig. letter dated 4/1/27—J. W. Alford to Edith E. Skoog

" " 7, " " Orig letter dated 5/24/27—J. W. Alford to Madolin B. Hoch

" " 8, " " Orig. letter dated 5/18/27—J. W. Alford to Madolin B. Hoch;

" " 9, " " Orig. letter dated 5/18/27—J. W. Alford to Nora D. Dickerson

" " 10, " " Orig. letter dated 6/1/27—J. W. Alford to Mr. & Mrs. J. Mein

" " 11, " " Orig. letter dated 5/18/27—J. W. Alford to W. E. Floyd

" " 12, " " Orig. letter dated 5/19/27—J. W. Alford to Mr. O. F. Wilson;

" " 13, " " Receipt dated 5/20/27—sgd. D. Weber to Mr. O. F. Wilson;

" " 14, " " Receipt dated 6/21/27—sgd. D. Weber to Wm. Stromberg and yellow slip paper attached, sgd. D. Weber—To Mrs. Stromberg;

and said witness having been cross-examined by Attorney Friedman,

Roberta Green is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and marked for identification, to-wit:

U. S. Ex. No. 15, for Ident: 3 pages typewriting entitled "Sketch of Sales Talk on Panhandle Petroleum Acres."

" " " 16, " " Carbon copy letter (3 pgs.) dated 3/18/27 J. W. Alford to Mr. C. O. Davis;

" " " 17, " " Orig. letter dated 2/15/27 —J. W. Alford & Co. to Walter E. Floyd—sgd. C. D. Jackson.

At the hour of 3:55 o'clock p. m., the Court admonishes the jury and declares a recess until the hour of 10 o'clock a. m., July 19th, 1929.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 19th day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

(Calendar of Judge McCormick called by Judge Sawtelle.)

United States of America, Plaintiff,)
) No. 9534-M
vs.) Crim.
)
J. W. Alford, Defendant.)

At the hour of 10 o'clock a. m., court reconvenes for further proceedings on trial of this cause; Donald Armstrong, Assistant United States Attorney, appearing as counsel for the Government; defendant J. W. Alford being present with his attorney Leo R. Friedman, Esq., and Ray E. Woodhouse being present as official stenographic reporter of the testimony and the proceedings;

John Pearson Broadhead is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibits are offered and admitted in evidence or are marked for identification, as indicated to-wit:

Government's Ex. No. 15; Sketch of Sales Talk on Panhandle Petroleum Acres (heretofore marked for identification.) .
In Evidence

" " " 18: 2-page statement entitled Alford's Sellergrams
In Evidence

Government's Ex. No. 19, for Ident: 1 page of typewriting "This is Sound Logic", etc.

" " " 20, for Ident: General Development Map Panhandle Area, Cimarron County, Oklahoma.

" " " 21, for Ident: Map of Cimarron County, Oklahoma

At the hour of 10:42 o'clock a. m., said witness is cross-examined by Attorney Friedman, and having testified on redirect examination conducted by Donald Armstrong, Esq., the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 22: Photograph of automobile with words "J. W. Alford & Co" and picture of man thereon;

whereupon said witness is recross-examined by Attorney Friedman, and

C. L. Brubaker is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and admitted in evidence, to-wit:

Government's Ex. No. 23: 2-page document entitled "Sketch of Sales Talk on Panhandle Petroleum Acres."

" " " 19: —Heretofore marked for identification.

At the hour of 12 o'clock, noon, the Court admonishes the jury and declares a recess until the hour of two o'clock P. M.; and at the hour of 2 o'clock p. m., court reconvenes, and all being present as before, witness C. L. Brubaker resumes the witness stand and testifies further on direct examination conducted by Donald Armstrong, Esq., and the following Government's exhibits are offered and admitted in evidence, to-wit:

Government's Ex. No. 24: Article from Saturday Evening Post of July 5, 1924;

" " " 25: Advertisement appearing on page 4 headed "Here is your one big chance to clean up a fortune" from Panhandle Petroleum Digest.

" " " 26: Document (yellow sheet of paper) J. W. Alford & Co. "This will acknowledge receipt" etc.

" " " 20: —Heretofore marked for identification.

At the hour of 2:49 o'clock p. m., witness Brubaker is cross-examined by Attorney Friedman and at this time the

following exhibits are offered and marked for identification, or are admitted in evidence, as indicated, to-wit:

Defendant's Ex. H, for Ident: Copy of letter 4/21/27 to All Salesmen from J. W. Alford & Co.

Defendant's Ex. I, In Evidence: Document dated 2/18/27 signed by Lee Baker "The Undersigned Hereby Contracts for," etc.

Defendant's Ex. J, for Ident: Letter 2/19/27 to J. W. Alford & Co. from Citizens Home Bank;

At the hour of 3:45 o'clock p. m., witness Brubaker testifies on redirect examination conducted by Donald Armstrong, Esq., and thereafter testifies on recross-examination conducted by Attorney Friedman, whereupon

Wm. Stromberg is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and admitted in evidence for the Government:

Government's Ex. No. 27: Photostat copy of Contract dated 2/21/27 sgd. by Stromberg No. 30, for $300.

" " " 28: Photostat copy of Contract dated 2/21/27 sgd. by Stromberg No. 31 for $300.

" " " 29: Two photostat copies of papers to Wm. Stromberg on stationery of J. W. Alford & Co. "This will acknowledge" etc.

At the hour of 4 o'clock p. m., the Court admonishes the jury and declares a recess in this cause until next Tuesday, July 23rd, 1929, 9:30 a. m.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 23rd day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

United States of America, Plaintiff,)
)
vs.) No. 9534-M Crim.
)
J. W. Alford, Defendant.)

This cause coming on at the hour of 9:30 o'clock a. m., for further trial, Donald Armstrong, Assistant U. S. Attorney, appearing for the Government; the defendant being present with his attorney, Leo R. Friedman, Esq.; Ray E. Woodhouse and Arvid E. Anderson, official stenographic reporters being present and alternating in the said capacity; and all jurors being present, the Court orders that the trial proceed and witness Wm. Stromberg, heretofore sworn, resumes the stand, and testifies further on direct examination conducted by Attorney Armstrong, and at this time the following exhibit is offered and marked for identification for the Government, to-wit:

Government's Ex. No. 30, for Ident: Circular letter 7/28/27 to Mr. Wm. Stromberg from J. W. Alford (2 pages)

and said witness is cross-examined by Attorney Leo R. Friedman, whereupon,

Mrs. Stromberg (wife of Wm. Stromberg) is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman, and having testified on further direct examination conducted by Donald Armstrong, Esq., and on further cross-examination conducted by Attorney Friedman,

John R. Gordon is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 31: Receipt No. 110 for $100.00, dated 3/5/27, witness Newton L. Aldrich, "J. W. Alford & Co." at top;

Government's Ex. No. 32: Confirmation of sale to Edith E. Skoog and John R. Gordon and envelope attached March 7, 1927;

and the following exhibits are offered and marked for identification, to-wit:

Government's Ex. No. 33, for Ident: Letter 1/19/28 to John R. Gordon from J. W. Alford & Co., Inc., and envelope post-

marked 1/20/28 to Mr. John R. Gordon;

" " " 34 " " Six checks, all on The First National Bank of Los Angeles, all signed John R. Gordon for $20, $10, 10, 10, 10, 40 resp.; dated 8/10/27; 7/6/27; 5/28/27; 5/5/27; 4/4/27 and 3/5/27 resp.

and said witness is cross-examined by Attorney Friedman, whereupon,

Edith E. Skoog is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and marked for identification, to-wit:

Government's Ex. No. 35, for Ident: Letter 1/12/28 to Edith E. Skoog from J. W. Alford, and envelope attached, postmarked 1/12/28 to Miss Edith E. Skoog;

" " " 36. " " Letter May 24, 1927 to Edith Skoog and John R. Gordon from J. W. Alford;

G. R. McNeill is called and sworn and testifies for the Government on direct examination conducted by Donald

Armstrong, Esq., and the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 37: Photostat copy of contract (torn and lower part of first page missing) No. 1485, dated 3/4/27 sgd. G. R. McNeil; and confirmation to G. R. McNeill

whereupon the following exhibits are offered and marked for identification, to-wit:

Government's Ex. No. 38, for Ident: 6 checks to J. W. Alford Company from G. R. McNeill, dated 7/4/27; 6/2/27; 5/4/27; 4/4/27; 3/4/27 9/2/27 resp; invoices to G. R. McNeill and receipt attached;

" " " 39, " " Letter 7/11/27 to G. R. McNeill from J. W. Alford; and envelope attached postmarked 7/11/27 to G. R. McNeil

" " " 40, " " Letter 7/22/27 to G. R. McNeill from J. W. Alford;

and at the hour of 10:40 o'clock a. m., said witness having been cross-examined by Attorney Friedman, and at this time the following exhibits having been offered and marked for identification, to-wit:

Defendant's Ex. K, for Ident: Letter 11/25/27 to J. W. Alford from G. R. McNeill;

" " L, " " Letter 11/16/27 to G. R. McNeill from J. W. Alford and envelope attached postmarked 11/17/27 to G. R. McNeill;

Fred Gundelach is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibit is offered and admitted in evidence for the Government;

Government's Ex. No. 41: Agreement 3/21/27 sgd. Fred Gondelach for 100.00, witness Oliver Newcomb and acknowledgment to Fred Gondelach from J. W. Alford & Co.

and the following exhibit is offered and marked for identification, to-wit:

Government's Ex. No. 42, for Ident: Letter 5/19/27 to J. W. Alford, Trustee, from Fred Gundelach;

and said witness Fred Gondelach having thereupon testified on cross-examination by Friedman, and on redirect examination conducted by Attorney Armstrong; on recross-examination conducted by Attorney Friedman and on further redirect examination conducted by Attorney Armstrong; a recess is declared at the hour of 11:04 o'clock a. m., for ten minutes; and at the hour of 11:14 o'clock

a. m., court having reconvened, and all being present as before, it is ordered that the trial be proceeded with, whereupon,

Newton L. Aldrich is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time Government's Exhibit No. 43 is marked for identification, being as follows, to-wit:

Government's Ex. No. 43, for Ident: Specimen of Grant Deed

and said witness is cross-examined by Attorney Friedman, and having testified on redirect examination conducted by Donald Armstrong, Esq.,

Paul Doring is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and having been cross-examined by Leo R. Friedman, Esq.,

Dr. T. Lewis Mueller is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and admitted in evidence, or are marked for identification, as indicated, to-wit:

Government's Ex. No. 44: In Evidence — Subscription contract 3/15/27, sgd. by Dr. T. L. Mueller, for six hundred dollars, and confirmation attached—to Dr. T. L. Mueller, dated March 15, 1927 from J. W. Alford & Co.

Government's Ex. No. 45: For Ident. 5 checks to J. W. Alford & Co. from Dr. T. L. Mueller, dated 4/15/27; 5/12/27; 6/14/27; 7/15/27; and 7/26/27 resp. for $60, $60, $60, $60, $120, resp.

whereupon said witness is cross-examined by Attorney Friedman, and

Mrs. Ella Gardner is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman; testifies on redirect examination, and is examined by the Court; whereupon said witness having testified on recross-examination conducted by Attorney Friedman, and on redirect-examination conducted by Attorney Armstrong, the Court, at the hour of 12:03 o'clock p. m., declares a recess until the hour of 1:30 o'clock p. m., and at the hour of 1:28 o'clock p. m., court reconvenes, and all being present as before, and the Court having ordered that the trial be proceeded with,

Cameron F. Bradley is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibits are offered and marked for identification, to-wit:

Government's Ex. No. 46, for Ident: Confirmation to Bessie E. McCluggage from J. W. Alford & Co., and envelope attached, postmarked 2/26/27 to Bessie E. Cluggage

" " " 47, " " 12 checks signed by Bessie E. McCluggage to J. W. Alford & Co., one for $150; five for $60. ea.; one for $100; one for $80. and four for $20. ea.

Government's Ex. No. 34 and Government's Exhibits Nos. 39, 40 and 38, heretofore marked for identification, are now admitted in evidence, and thereupon the following exhibits are marked for identification for the Government, to-wit:

Government's Ex. No. 48, for Ident: Letter 5/31/27 to J. W. Alford from

" " " 49, " " 4-page letter to Dear Mr. Hood from J. W. Alford and circular attached;

" " " 50, " " Letter 8/1/27 to Chas. E. Hood from J. W. Alford;

" " " 51, " " Letter 9/8/27 to Chas. E. Hood from J. W. Alford and envelope 9/8/27 to Chas. E. Hood.

At the hour of 2:50 o'clock p. m., a recess is declared for ten minutes, and at the hour of 3 o'clock p. m., court reconvenes, and all being present as before, witness

Cameron F. Bradley resumes the stand and testifies further on direct examination conducted by Donald Armstrong, Esq., and in connection with his testimony, the following exhibits are offered and marked for identification, to-wit:

Government's Ex. No. 52, for Ident: Letter 5/28/27 to J. W. Alford signed Ellen O. Hancock: letter 7/1/27 to Dear Client from J. W. Alford; letter 8/26/27 to Mrs. Ellen O. Hancock from J. W. Alford and letter 3/23/1928 to Miss Ellen O. Hancock from J. W. Alford and receipt to Ellen O. Hancock from Cameron Bradley dated 6/25/27

" " " 53, for Ident: 13 checks all on Bank of America to J. W. Alford & Co., sgd. Madolin B. Hoch

" " " 54, for Ident: Letter 12/7/27 to Madolin B. Hoch from J. W. Alford and envelope postmarked 12/8/27;

" " " 55, for Ident: Letter 9/22/28 to Madolin B. Hoch from J. W. Alford and envelope postmarked 9/24/28;

" " " 56, for Ident: Letter 5/20/27 to J. W. Alford from.....

" " " 57, for Ident: Letter July 4, 1927 to Miss Nora D. Dickerson from J. W. Alford

" " " 58, for Ident: Four page letter 7/21/27 to My dear Miss

Dickerson from J. W. Alford and circular attached;

" " " 59, for Ident: Correspondence —letters and circular to Miss Nora D. Dickerson from J. W. Alford and envelopes;

" " " 60, for Ident: 5-page letter 9/22/27 to Dear Client from J. W. Russell, envelope postmarked 9/23/27 resignation notice 10/7/27 from J. W. Russell, and envelope 10/7/27 to Nora D. Dickerson;

" " " 61, for Ident: Letter 7/20/28 to Mrs. Ada McKean from J. W. Alford, and certificate of J. W. Alford & Co., for 120 shares No. 111

" " " 62, for Ident: 3 checks to J. W. Alford & Co., from O. F. Wilson dated 4/20/27; 5/4/27 and 5/20/27 resp. one for 80.00 and 2 for 20.00 ea. and promissory note sgd. O. F. Wilson dated 5/4/27;

" " " 63, for Ident: Letter 5/20/27 to J. W. Alford

" " " 64, for Ident: Letter 7/15/27 to O. F. Wilson from J. W. Alford, circular attached and envelope postmarked 7/15/29

Government's Ex. No. 65, for Ident: Letter 8/26/27 to O. F. Wilson from J. W. Alford, and envelope postmarked 8/27/27;

" " " 66, for Ident: Letter 7/22/27 to Walter E. Floyd from J. W. Alford;

and thereupon Government's Exhibit No. 45, heretofore marked for identification, is admitted in evidence, and said witness Cameron F. Bradley having testified on cross-examination conducted by Attorney Friedman; the jury and all witnesses are excused, at the hour of 3:56 o'clock p. m., to the hour of 9:30 o'clock a. m., tomorrow, and they having left the courtroom,

Upon motion of Donald Armstrong, Esq., Government's Exhibit No. 2 is withdrawn and a copy is substituted for the original and is marked Government's Exhibit No. 2; whereupon counsel and the Court having made statements regarding the introduction of certain documents, heretofore marked for identification, in evidence; the Court, at the hour of 4:03 o'clock p. m., declares a recess until the hour of 9:30 o'clock a. m., tomorrow.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 24th day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO TEM. (Calendar of Judge Paul J. McCormick called by Judge Sawtelle.)

United States of America, Plaintiff,)
)
vs.) No. 9534-M Crim.
)
J. W. Alford, Defendant.)

This cause coming on at this time for further trial; Donald Armstrong, Assistant United States Attorney, appearing as counsel for the Government, the defendant being present, with his attorney Leo R. Friedman, Esq., and Ray E. Woodhouse and Arvid E. Anderson being present as official stenographic reporters of the testimony and the proceedings, and alternating in the said capacity; court reconvenes at the hour of 9:30 o'clock a. m., and all jurors being present,

Cameron F. Bradley, heretofore sworn, resumes the stand and testifies further on cross-examination conducted by Attorney Friedman, and at this time the following exhibit is offered and marked for identification for the defendant, to-wit:

Defendant's Ex. M, for Ident: Inter office communication 3/25/27 from auditor

and said exhibit is later offered and admitted in evidence, and said witness testifies on redirect examination conducted by Donald Armstrong, Esq., and is examined by several jurors, by permission of the Court; whereupon said witness testifies on further recross-examination con-

ducted by Attorney Friedman, further redirect examination conducted by Attorney Armstrong; and further recross-examination conducted by Attorney Friedman, and at this time the following exhibit having been offered and marked for identification for the Government, to-wit:

Government's Ex. 67, for Ident: Letter 7/28/27 to Wm. Stromberg from J. W. Alford (2 pages)

Ellen O. Hancock is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 68: Contract 3/16/27 for $100.00; witness P. H. Kroger; and confirmation attached—to Ellen O. Hancock, sgd. Cameron Bradley,

and said witness is not cross-examined.

Miss Jennie S. Mueller is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 69: Subscription contract 3/16/27 for $600.00 sgd. by Jennie S. Mueller, and confirmation to Jennie S. Mueller sgd. Cameron Bradley.

whereupon said witness is examined by a juror, by permission of the Court, and thereafter testifies on cross-examia-

nation conducted by Attorney Friedman, and on redirect examination conducted by Attorney Armstrong, and thereupon the following exhibit is offered and marked for identification for the defendant, to-wit:

Defendant's Ex. N, for Ident: Complaint—Jennie S. Mueller vs. J. W. Alford, No. 6334, sgd. Jennie S. Mueller.

Miss Bessie E. McCluggage is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibit is offered and admitted in evidence, to-wit:

Government's Ex. No. 70: Government's Exhibit No. 46 and 47 heretofore marked for identification, and in addition thereto—two contracts dated 2/25/27 and 2/8/27, resp., both sgd. Bessie E. McCluggage,

and Government's Exhibit No. 4, heretofore marked for identification, is also admitted in evidence at this time, whereupon, said witness is examined by a juror, and testifies further on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman, and at the hour of 10:50 o'clock a. m., a recess is declared for ten minutes, and at the hour of 10:58 o'clock a. m., court reconvenes and all being present as before, witness Bessie E. McCluggage resumes the stand and is withdrawn, and

Chas. E. Hood is called and sworn and testifies for the Government on direct examination conducted by Donald

Armstrong, Esq., and at this time the following exhibits are offered and admitted in evidence, to-wit:

Government's Ex. No. 5: heretofore marked for identification

" " " 71: Contract 3/30/ for $100.00, sgd. Chas. E. Hood, witness Chandler Peirce and confirmation 3/30/27 to Chas. E. Hood, sgd. by Cameron Bradley:

and thereupon said witness is cross-examined by Leo R. Friedman, Esq., and at this time the following exhibits are offered and marked for identification, to-wit:

Defendant's Ex. O, for Ident: Letter 5/31/27 to J. W. Alford & Co., from Chas. E. Hood

" " P. for Ident: Letter 5/31/27 to J. W. Alford, Trustee, from Chas. E. Hood:

C. O. Davis is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Leo R. Friedman, Esq., whereupon,

Dolores Bingham is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 72: Two contracts 3/24/27 and 4/23/27, resp., ea. for $100.00, one sgd. by Dolores Bingham; and two confirmations attached—to Dolores Bingham, dated 3/25/27 and 4/23/27 resp.; both sgd. by Cameron Bradley

Walter Floyd is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman, and thereupon testifies on redirect examination conducted by Donald Armstrong, Esq., whereupon,

Ada McKean is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Leo R. Friedman, Esq., and at this time,

Government's Exhibit No. 61, for identification, is offered and admitted in evidence, being letter and certificate, as aforesaid.

Nora D. Dickerson is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibit is offered and admitted in evidence, to-wit:

Government's Ex. No. 73: Promissory note 3/1/27 for $350.00 sgd. J. W. Alford

and said witness is cross-examined by Attorney Friedman, and at the hour of 11:56 o'clock a. m., a recess is declared until the hour of 1:30 o'clock p. m.

Court reconvenes at the hour of 1:29 o'clock p. m., and all being present as before, it is ordered that the trial be proceeded with, whereupon,

Madolin B. Hoch is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and the following exhibits are offered and admitted in evidence for the Government:

Government's Ex. No. 74: Two agreements dated 4/21/27 and 4/7/27 resp. for $200.00, both signed Madolin B. Hoch; witness M. F. Elrick;

" " " 75: Two confirmations to Madolin B. Hoch, dated 4/21/27 and 4/7/27 resp., both sgd. Cameron Bradley, and envelope postmarked 4/8/27

" " " 54: Heretofore marked for identification

" " " 7: " " " "

" " " 8: " " " "

and said witness testifies on cross-examination conducted by Attorney Friedman, and on redirect examination conducted by Donald Armstrong, Esq., and thereafter,

Josephine Mein is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time Government's Exhibit No. 10, heretofore marked for identification, is offered and admitted in evidence (excluding pencil notations thereon); and said witness is subjected to cross-examination by Attorney Friedman, and thereafter to redirect ex-

amination and re-cross examination conducted by said Attorneys Armstrong and Friedman, respectively.

Kimpton Ellis is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and at this time Government's Exhibit No. 67, heretofore marked for identification, is admitted in evidence, as to certain portions thereof, as reflected by reporter's transcript, whereupon witness Kimpton Ellis is temporarily withdrawn from the witness stand, and

Frank F. Sharon is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman, and thereafter,

Mr. O. F. Wilson is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is cross-examined by Attorney Friedman, and

At the hour of 2:53 o'clock p. m., the Court excuses the jury for a few minutes, and they having left the court room, a statement is made by Donald Armstrong, Esq. re introduction of Government's Exhibit No. 33, for identification, in evidence, and Leo R. Friedman, Esq. argues in opposition thereto, whereupon a further statement having been made by Attorney Armstrong, ruling is reserved; whereupon said attorney having made a statement re introduction of Government's Exhibit No. 16 for identification, in evidence, and Attorney Friedman having argued in opposition thereto, the said exhibit is now admitted in evidence.

At the hour of 3:17 o'clock p. m., the jury return into court, and all being present as before,

W. G. Means is called and sworn and testifies for the Government on direct examination conducted by Donald Armstrong, Esq., and is not cross-examined; whereupon,

Witness Kimpton Ellis, heretofore sworn, resumes the stand and counsel stipulate as to deposition of said witness, and he is withdrawn from the witness stand without cross-examination by counsel for the defendant; whereupon the following exhibit is offered and marked for identification for the Government, to-wit:

Government's Ex. No. 76, for Ident: Deposition of Charles L. Brubaker vs. J. W. Alford, in Superior Court, Los Angeles County, No. 234,583, fld. by L. E. Lampton, Co. Clerk 12/14/27

and certain portions thereof having thereupon been read to the jury by Donald Armstrong, Esq.,

The Government rests, at the hour of 3:52 o'clock p. m., with the exception of evidence to be introduced on the sixth count, as reflected by the reporter's transcript; and at this time the jury and defendant's witnesses are excused until the hour of 10:30 o'clock a. m., tomorrow, and at the hour of 3:54 o'clock p. m., the Court declares a recess in this trial until said time.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 25th day of July in the year of our Lord one thousand nine hundred and twenty-nine.

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

(Calendar of Judge McCormick.)

United States of America, Plaintiff,)
)
vs.) No. 9534-M Crim.
)
J. W. Alford, Defendant.)

Court reconvenes at the hour of 10 o'clock a. m., for further trial of this cause, Donald Armstrong, Assistant United States Attorney, appearing as counsel for the Government; defendant J. W. Alford being present, and Leo R. Friedman, Esq., his attorney being present; all jurors being absent and Ray E. Woodhouse and Arvid E. Anderson, official stenographic reporters being present and alternating in the recording of the testimony and the proceedings; and the Government having heretofore closed its case with the exception of calling witness John R. Gordon; and the Court having stated that the defendant may consider the Government's case closed for the purpose of making certain motions; Attorney Leo R. Friedman now argues in support of his motion to strike certain exhibits, and the said motion is denied, whereupon defendant moves the Court to instruct the jury to return a ver-

dict of not guilty on counts one, two, five and six, and argues in support of motion, and said motion is denied, and the Court having stated its reasons for said action, orders that the jury be brought into the court room, and thereupon said jurors having entered the court room, and having taken their seats in the jury box; witness John R. Gordon, heretofore sworn, resumes the stand and testifies further on direct examination conducted by Attorney Armstrong, and is examined by the Court, and is cross-examined by Attorney Friedman; and at this time the following exhibits are offered and admitted in evidence, to-wit:

Government's Ex. No. 33: Heretofore marked for identification

" " " 35: " " " "

and at the hour of 11:02 o'clock a. m., the Government rests.

Attorney Leo R. Friedman again moves the Court to instruct the jury to return a verdict of not guilty on all grounds heretofore stated, and said motion is denied, and at the hour of 11:13 o'clock a. m., the court having taken a recess for ten minutes, and having reconvened at the hour of 11:23 o'clock a. m., and all being present as before, including the jury;

Chandler Peirce is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and is cross-examined by Attorney Armstrong, and thereupon,

B. H. Kroger is called and sworn and testifies for the defendant on direct examination conducted by Attorney

Friedman, and having been cross-examined by Attorney Armstrong.

Brooks E. Miller is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman and is cross-examined by Attorney Armstrong, and thereupon having testified on examination conducted by several jurors, by permission of the Court, and on redirect examination conducted by Attorney Friedman; a recess is declared, at the hour of 12:02 o'clock p. m., until the hour of 1:30 o'clock p. m., and at the hour of 1:30 o'clock p. m., court reconvenes, and all being present as before, including the jury,

Peter Joseph Deaux is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and is cross-examined by Attorney Armstrong, whereupon,

Harry Moxness is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and is cross-examined by Attorney Armstrong;

Ernest E. Valye is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and having thereupon been cross-examined by Attorney Armstrong,

Mrs. Sonia West is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman; is cross-examined by Attorney Armstrong; whereupon said witness testifies on redirect examination conducted by Attorney Friedman, and is examined by the Court; and having thereupon testified on further redirect examination, conducted by Attorney Friedman, and on recross-examination conducted by Attorney Armstrong,

George Davis is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and is cross-examined by Attorney Armstrong;

W. E. Gale is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman; is cross-examined by Attorney Armstrong, and thereupon having been examined by a juror, with the permission of the Court,

C. F. Ruprecht is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman and is cross-examined by Attorney Armstrong, whereupon,

C. E. Jackson is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman and is examined by a juror, and is cross-examined by Attorney Armstrong; and at this time Government's Exhibit No. 21, heretofore marked for identification, is admitted in evidence for a certain purpose; and said witness testifies on redirect examination conducted by Attorney Friedman, and is examined by jurors, and by the Court, whereupon said witness having testified on redirect examination conducted by Attorney Friedman,

The Court, at the hour of 3:25 o'clock p. m., admonishes the jury and declares a recess until tomorrow, 9:30 o'clock a. m.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 26th day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

(Calendar of Judge Paul J. McCormick)

United States of America, Plaintiff,)
)
vs.) No. 9534-M Crim.
)
J. W. Alford, Defendant.)

Court reconvenes, at the hour of 9:30 o'clock a. m., for further trial of this cause; Donald Armstrong, Assistant United States Attorney, appearing for the Government; the defendant being present with Attorney Leo R. Friedman; all jurors being present and Arvid E. Anderson being present as official stenographic reporter of the testimony and the proceedings;

Guy W. Slack is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and in connection with his testimony, the following exhibits are offered and admitted in evidence for the defendant, to-wit:

Defendant's Ex. Q: Letter 1/20/27 to J. W. Alford from Guy W. Slack

" " R: Letter 2/17/27 to J. W. Alford from Guy W. Slack

" " S: Letter 2/10/27 to J. W. Alford from Guy W. Slack

" " T: Letter 4/19/27 to J. W. Alford from Guy W. Slack

and the following exhibit is offered and marked for identification for the defendant, to-wit:

Defendant's Ex. U, for Ident: Telegram 6/30/27 to J. W. Alford from Slack.

At the hour of 10:41 o'clock a. m., said witness is cross-examined by Donald Armstrong, Esq.; is examined by a juror, and testifies on redirect examination conducted by Attorney Friedman, and at this time the following exhibits are offered and marked for identification, to-wit:

Defendant's Ex. V, for Ident: 2-page letter 8/13/27 to J. W. Alford from Guy W. Slack;

" " W, " " Telegram 4/23/27 to J. W. Alford from Guy W. Slack

Edwin A. Westberg is called and sworn and testifies for the defendant on direct examination conducted by Attorney Friedman, and is examined by a juror, whereupon said witness testifies on cross-examination conducted by Attorney Armstrong, and on redirect examination conducted by Attorney Friedman and at the hour of 11:19 o'clock a. m., a recess is declared for ten minutes; and at the hour of 11:28 o'clock a. m., court having reconvened, and all being present as before,

J. W. Alford, defendant, is called and sworn and testifies in his own behalf on direct examination conducted by

Attorney Friedman, and at the hour of 12:01 o'clock *a.* m., a recess is declared to the hour of *2* o'clock p. m.

At the hour of *2* o'clock p. m., court reconvenes, and all being present as before, including the jury, witness J. W. Alford resumes the stand and testifies further on direct examination conducted by Donald Armstrong, Esq., and at this time the following exhibits are admitted in evidence for the defendant:

Defendant's Ex. J—heretofore marked for identification
" " G— " " " "

At the hour of 3:09 o'clock p. m., a recess is declared for ten minutes, and at the hour of 3:16 o'clock p. m., court reconvenes, and all being present as before, J. W. Alford resumes the stand and testifies further on direct examination conducted by Attorney Friedman, and at this time defendant's Exhibit W, heretofore marked for identification, is offered and admitted in evidence.

At the hour of 4 o'clock p. m., the Court admonishes the jury and declares a recess in this trial to the hour of 9:30 o'clock a. m., July 30th, 1929.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 30th day of July in the year of our Lord one thousand nine hundred and twenty-nine.

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

(Calendar of Judge Paul J. McCormick, called by Judge Sawtelle.)

United States of America, Plaintiff,)
)
vs.) No. 9534-M Crim.
)
J. W. Alford, Defendant.)

This cause coming on for further trial at the hour of 9:30 o'clock a. m.; Donald Armstrong, Assistant U. S. Attorney, appearing as counsel for the Government; defendant J. W. Alford being present, with his attorney, Leo R. Friedman, Esq.; Arvid E. Anderson and W. S. Cox being present as official stenographic reporters; and all jurors being present; the Court having ordered that the trial be proceeded with,

Stuart D. Anderson is called and sworn and testifies, out of order, for the defendant, by permission of the Court, on direct examination conducted by Attorney Friedman, and at this time the following exhibit is offered and admitted in evidence for the defendant, to-wit:

Defendant's Ex. X: Document "Know all men by these presents," etc., sgd. J. W. Alford

and said witness is cross-examined by Donald Armstrong, Esq., and thereafter having testified on redirect examination conducted by Attorney Friedman,

J. W. Alford, heretofore sworn, takes the stand and is cross-examined by Donald Armstrong, Esq., and thereafter having testified on redirect examination conducted by

Attorney Friedman, and in response to questions asked by certain jurors.

The defendant rests at the hour of 10:58 o'clock a. m., and a recess is declared for ten minutes; and thereafter, the Court having reconvened, and all being present as before,

J. St. Paul White, heretofore sworn, resumes the stand and testifies in rebuttal on direct examination conducted by Donald Armstrong, Esq., for the Government, and is cross-examined by Leo R. Friedman, Esq.

At the hour of 11:50 o'clock a. m., the Court excuses the jury to the hour of 2 o'clock p. m., and in the absence of the jury, Attorney Friedman makes a statement to the Court, and thereupon, at the hour of 11:53 o'clock a. m., a recess is declared until the hour of 2 o'clock p. m.

At the hour of 2 o'clock p. m., court reconvenes, and the defendant and the jury being present, and all appearing as before, and Ray E. Woodhouse being now present as reporter.

C. L. Brubaker, heretofore sworn, is called as a witness for the Government, and testifies in rebuttal for the Government on direct examination conducted by Donald Armstrong, Esq., and is not cross-examined.

Cameron F. Bradley, heretofore sworn, is called as a witness by the Government, in rebuttal, and testifies on direct examination conducted by Donald Armstrong, Esq., and is not cross-examined.

At the hour of 2:10 o'clock p. m., the Government rests in rebuttal.

Brooks E. Miller, heretofore sworn, is called and testifies for the defendant in sur-rebuttal on direct examination

conducted by Attorney Friedman, and having been cross-examined by Donald Armstrong, Esq.; at the hour of 2:22 o'clock p. m., the jury is excused, and having left the court room; Attorney Friedman makes a statement to the Court regarding testimony, and that he would desire to question witness J. St. Paul White further, if said witness were present; and at the hour of 2:24 o'clock p. m., said Attorney renews his motion for a directed verdict of not guilty, and argues in support thereof; and the Court having stated that the defendant may assume, for the purpose of making his motions, that both sides have rested, as reflected by the reporter's transcript; W. S. Cox supersedes Ray Woodhouse as stenographic reporter, at the hour of 2:29 o'clock p. m., and Attorney Friedman argues further to the Court, and motions of the defendant are denied and exceptions are noted.

At the hour of 2:35 o'clock p. m., a recess is declared, and at the hour of 2:47 o'clock p. m., court reconvenes, and all being present as before, including the jury,

J. St. Paul White, heretofore sworn, resumes the stand and is cross-examined by Attorney Friedman, on the Government's rebuttal testimony, and is not subjected to redirect examination by counsel for the Government.

The Court now orders that the record show that defendant's motions have been made at the close of the Government's case, and the defendant's case, and after the close of all testimony, and that said motions have been denied, and exceptions noted, as reflected by the reporter's transcript.

At the hour of 2:49 o'clock p. m., Donald Armstrong, Assistant United States Attorney, argues to the jury in support of the Government's case herein, and closes his argument at the hour of 3:52 o'clock p. m., at which time the Court admonishes the jury and declares a recess in this trial to the hour of 10 o'clock a. m., tomorrow.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 31st day of July in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable WM. H. SAWTELLE, District Judge. PRO. TEM.

United States of America, Plaintiff,	)	
	)	
vs.	)	No. 9534-M Crim.
	)	
J. W. Alford, Defendant.	)	

This cause coming on at this time for further trial: Donald Armstrong, Assistant U. S. Attorney, appearing as counsel for the Government, the defendant being present with his attorney Leo R. Friedman, Esq., and Ray E. Woodhouse being present as official stenographic reporter of the testimony and the proceedings; court reconvenes at the hour of 10 o'clock a. m., and all jurors being present, it is ordered that the trial be proceeded with, whereupon Attorney Leo R. Friedman argues to the jury in behalf of the defendant, and having closed his argument at the hour of 12:05 o'clock p. m., the Court admonishes the jury and declares a recess until the hour of 1:30 o'clock p. m.; and at the said hour of 1:30 o'clock p. m., court reconvenes, and all being present as before, Donald Armstrong, Esq., argues to the jury in reply for the Government, and having closed his argument at the hour of 2:15 o'clock p. m.; the Court instructs the jury on the law involved in this

case, and having closed its instructions at the hour of 3:04 o'clock p. m.; Leo R. Friedman asks for an exception for the defendant to the refusal of the Court to give certain requested instructions, and it having been so ordered, and exceptions having also been noted by counsel for the defendant to certain portions of the charge of the Court to the jury, as reflected by reporter's transcript; A. D. Clark is sworn as bailiff to care for the jury, at the hour of 3:10 o'clock p. m., and the jury retire for deliberation upon a verdict; and in their absence, the Court expresses its appreciation to counsel for the manner in which they have conducted this trial, and at the hour of 3:13 o'clock p. m., a recess is declared until the return of the jury.

At the hour of 3:27 o'clock p. m., court reconvenes, and all being present as before, and all jurors being present; the jury are asked if they have agreed upon a verdict, and reply that they have agreed; whereupon the jury present their verdict herein, which is read in open court, the said verdict of the jury, as presented and read, being as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION United States of America, Plaintiff Vs. J. W. Alford, Defendant. No. 9534-M-Cr. VERDICT. We, the Jury in the *above*-entitled cause, find the defendant, J. W. Alford Guilty as charged in the 1st. count of the Indictment, and Guilty as charged in the 2nd. count of the Indictment, and Guilty as charged in the 5th count of the Indictment, and Guilty as charged in the 6th. count of the Indictment. Los Angeles, California, July 31st, 1929. W. F. Ball, FOREMAN OF THE JURY.

and the jury having returned a verdict finding defendant J. W. Alford guilty as charged in the first, second, fifth and sixth counts of the Indictment herein; said defendant is remanded to the custody of the United States Marshal; whereupon Attorney Leo R. Friedman asks that defendant be allowed his liberty on bail until pronouncement of sentence, and having requested that this cause be continued to Saturday of this week, August 3rd, 1929; it is ordered that cause be continued to said date for sentence, and the Court announces that it will confer with Judge James relative to release of defendant on bond; and at this time said bond in the sum of $3500.00 is exonerated.

The Court now expresses its appreciation to the jurors for their service herein, and orders that they be, and they are excused for the term.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

United States of America, Plaintiff,
vs. No. 9534-M-Cr.
VERDICT
J. W. Alford, Defendant.

We, the July in the *above*-entitled cause, find the defendant, J. W. Alford Guilty as charged in the 1st. count of the Indictment, and Guilty as charged in the 2nd. count of the Indictment, and Guilty as charged in the 5th. count

of the Indictment, and Guilty as charged in the 6th. count of the Indictment.

Los Angeles, California, July 31st, 1929.

W. F. Ball
FOREMAN OF THE JURY.

[Endorsed]: Filed Jul 31 1929 R. S. Zimmerman, Clerk By Frances E. Cross, Deputy Clerk

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At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Saturday the 3rd day of August in the year of our Lord one thousand nine hundred and twenty-nine.

Present:

The Honorable WM. H. SAWTELLE, District Judge. Pro. Tem.

United States of America, Plaintiff,	)	
	)	
vs.	)	No. 9534-M Crim.
	)	
J. W. Alford, Defendant.	)	

This cause coming on at this time for sentence of the defendant on Counts one, two, five and six of the Indictment; Donald Armstrong, Assistant United States Attorney, appearing as counsel for the Government, defendant J. W. Alford being present and Leo R. Friedman, Esq. appearing as his attorney, and Ray E. Woodhouse being present as official stenographic reporter of the tes-

timony and the proceedings: Leo R. Friedman, Esq. moves to set aside verdict and for a new trial and argues in support thereof, as reflected by reporter's transcript, and said motions are denied by the Court, and exception noted; whereupon the Court having made a statement to the defendant, and having asked if the defendant has anything to say why judgment should not be pronounced against him; Attorney Friedman moves in arrest of judgment, and asks that verdict be vacated and set aside, and be declared null and void, and having argued to the Court in support of motion, said motion is denied and an exception is noted for the defendant; and thereupon Attorney Friedman having made a statement as to degrees of punishment, and relative to alternative sentence of fine or imprisonment which may be imposed under the statute, in the discretion of the Court; and having asked that extreme leniency be shown to the defendant; a statement is made for the Government by Donald Armstrong, Esq., and the Court now pronounces sentence upon J. W. Alford for the crime of which he stands convicted, namely, violation of Section 215 Federal Penal Code, and it is the judgment of the Court that said defendant be imprisoned in the Federal Penitentiary at McNeil Island, Washington, for the term and period of five years, and pay a fine unto the United States of America in the sum of $1000.00 on the first count; be imprisoned in said Penitentiary for the term and period of two years, and pay a fine unto the United States of America in the sum of $1000.00 on the second count, term of imprisonment to begin and run concurrently with term imposed on the first count; and be imprisoned in said Penitentiary for the term and period of two years on each of the fifth and sixth counts of the Indictment, said

terms of imprisonment on the fifth and sixth counts to begin and run concurrently with terms of imprisonment imposed on the first and second counts.

Leo R. Friedman, Esq. now makes a statement regarding bail of the defendant on appeal, and states that it will be impossible to raise bail in excess of $5000.00; whereupon the defendant having made a statement to the Court regarding his financial status; and counsel for the Government having no recommendation to make as to bail on appeal; it is by the Court ordered that bond on appeal be furnished in the form of surety company bond in the sum of $5000.00, on condition that defendant Alford shall remain in the State of California, or State of Nevada, and that bond provide for payment of fine if judgment is affirmed on appeal; and it is ordered that the United States Marshal shall not remove the defendant from the City of Los Angeles before Monday, week, to afford defendant the opportunity to furnish bond.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff,	)	
vs	)	No. 9534 M.
J. W. ALFORD, Defendant.	)	

MOTION FOR NEW TRIAL

Comes now the above named defendant J. W. ALFORD, by his attorney, LEO R. FRIEDMAN, and moves the Court to set aside the verdict herein and grant

him a new trial, and as reasons therefor shows to the Court and specifies the following:

1. That the Court erred in denying the defendant's motion for a Bill of Particulars in all respects, except as said motion was in part granted by the Court.

2. The verdict is contrary to the law of the case.

3. The verdict is not supported by the evidence in the case.

4. The Court upon the trial of the case admitted incompetent evidence offered by the United States.

5. The Court upon the trial of the case excluded competent evidence offered by said defendant.

6. That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses or any of them alleged in the indictment in this: That there is no proof that the alleged offenses or any of them was committed within the jurisdiction of the above-entitled court.

8. That the Court improperly instructed the jury, to the substantial prejudice of said defendant.

9. That the Court refused, to the substantial prejudice of said defendant, to give correct instructions on the law tendered by said defendant.

10. That the Court erred in refusing to direct a verdict of "Not Guilty" at the close of the evidence of the United States.

11. That the Court erred in refusing to direct a verdict of "Not Guilty" at the close of all the evidence.

Dated at Los Angeles, California, August 3, 1929.

Leo R. Friedman

Attorney for defendant.

[Endorsed]: Case No. 9534-M. District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Motion for New Trial Filed Aug 3-1929 R. S. Zimmerman, Clerk By Francis E. Cross Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 9534-M.
J. W. ALFORD, Defendant.	)	

MOTION IN ARREST OF JUDGMENT

And now, after verdict against the above-named defendant, J. W. ALFORD, and before sentence, comes the defendant in his own proper person, by his attorney, Leo R. Friedman, and moves the Court here to arrest judgment herein and not pronounce the same for the following reasons, to-wit:

1. That the said indictment and each count thereof in this cause does not state facts sufficient to constitute a public offense under the laws of the United States against the said defendant.

2. That it appears from the record in the above-entitled cause that judgment, if made and entered, would be unlawful.

3. That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses or any of them alleged in the indictment in this: that there is no proof that the alleged offenses or any of them were or was committed within the jurisdiction of the above-entitled court.

4. That the indictment and each and every count thereof is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

WHEREFORE, because of which said errors in the record herein no lawful judgment can be rendered by the Court, the said defendant prays that this Honorable Court arrest and withhold the judgment herein and that the verdict herein be vacated and set aside and declared null and void.

Dated at Los Angeles, California, August 3, 1929.

Leo R. Friedman

Attorney for defendant.

[Endorsed]: Case No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Motion in Arrest of Judgment Filed Aug 3-1929 R. S. Zimmerman, Clerk By Francis E. Cross Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

- - - -

THE UNITED STATES OF AMERICA,
Plaintiff and Respondent,
vs. No. 9534-M-Criminal
J. W. ALFORD,
Defendant and Appellant.

- - - -

BILL OF EXCEPTIONS

Be it remembered that heretofore, to wit, on January 3, 1929, the Grand Jury of the United States, in and for the Southern District of California, Central Division, did present and return into and before the above entitled Court its indictment against the above named defendant; that on said day said indictment was filed in said Court and thereafter said defendant was duly arraigned as shown by the record on file in the above entitled cause, and, as so shown by said record, did thereafter plead not guilty to said indictment, and each and every ground thereof.

Exception No. 1.

And, be it further remembered, that said defendant duly and seasonably filed his demand for a bill of particulars, as shown by the records of said Court, and made a part hereof, a copy thereof being as follows:

MOTION FOR BILL OF PARTICULARS

Now comes the defendant, J. W. Alford, by H. H. Harris, Esq., his attorney, and moves the above entitled

Court for an order directing The United States District Attorney for the Southern District of California, to furnish to the defendant a bill of particulars in order that said defendant may know and be particularly informed of the following matters, to wit:

1. What said alleged scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises consisted of in its entirety.

2. What were the false or fraudulent pretenses, representations or promises used by or intended to be used by defendant in said scheme and artifice to obtain money and property.

3. The names of the other persons too numerous to mention from whom the defendant devised a scheme and artifice to obtain their money and property.

4. What was the nature of the business that defendant engaged in in Los Angeles, California, and in other places in the United States under the name and style of J. W. Alford & Co.

5. In what other place in The United States other than Los Angeles, California, did the defendant engage in business under the name and style of J. W. Alford & Co.; from whom did the defendant on or about the 17th day of January, 1927, obtain an option of approximately fifty-four sections of land in Cimarron County, Oklahoma.

6. What were the full terms and conditions of the option to purchase said land in Cimarron County, Oklahoma which defendant was alleged to have obtained on the 17th of January, 1927.

7. What were the names of the persons to whom defendant sold or offered for sale any parcels or tracts of land from and out of the tract described in said indictment as being in Cimarron County, Oklahoma.

8. What land he sold to any persons out of the tract of land described as being in Cimarron County, Oklahoma.

9. The names of any persons who bought and paid for any land in the tract described as being in Cimarron County, Oklahoma.

10. The names of any persons who were entitled to deeds to any land in Cimarron County, Oklahoma.

11. The names of any persons who demanded any deeds to any land in Cimarron County, Oklahoma.

12. The names of any persons who had delivered to said defendant any moneys in exchange for parcels or tracts of land in Cimarron County, Oklahoma and the amount of money paid by each thereof.

13. The names of the persons to whom defendant represented that they had purchased parcels or tracts of land from the defendant in Cimarron County, Oklahoma or that the prospect for discovering oil in the vicinity of or on the lands so purchased was not what defendant had expected it to be.

14. The names of the persons to whom defendant represented that he, the defendant had organized a "Ten Way to Win Syndicate" for the purpose of protecting the persons to be defrauded and that he would give such persons who had purchased land interests in said syndicate equal to the amount they had invested.

15. The times at which and dates on which the defendant represented that he had organized a "Ten Way

to Win Syndicate" and said other things as in the last preceding paragraph set forth.

16. The names of the persons from whom defendant obtained large or any sums of money by means of the scheme and artifice set forth in each and all of the counts of the indictment.

17. The amount of money received by defendant from any persons by means of the scheme and artifice set forth in each and all of the counts of the indictment.

18. When the defendant devised the scheme or artifice set forth in each or all of the counts of the indictment herein.

19. When the scheme and artifice set forth in the indictment terminated.

20. The full text and contents of the letter set forth in part in the second count of said indictment.

21. The full text and contents of the letter set forth in part of the third count of said indictment.

22. The full text and contents of the letter set forth in the fifth count of said indictment.

23. The full text and contents of the letter set forth in the sixth count of said indictment.

24. The times when and the places where and the persons to whom any and all of the pretenses and representations set forth in the indictment as having been made by defendant were made.

That said aforesaid mentioned matters relate to general allegations contained in the indictment on file herein and more particular and specific knowledge of such matters are necessary to said defendant on his trial and without such particular knowledge said defendant will be unable

(Testimony of J. W. Alford.)

to properly prepare his defense thereto or to prepare any defense at all.

This motion is made upon the indictment on file herein and upon the affidavit of defendant served and filed herewith and attached hereto.

Respectfully submitted,

H. H. HARRIS

Attorney for defendant.

(TITLE OF COURT AND CAUSE)

AFFIDAVIT OF J. W. ALFORD

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

J. W. ALFORD, being first duly sworn, deposes and says:

That he is the defendant in the above entitled action; that the trial of the above entitled action has been set for the 11th day of June, 1909, that he is in possession of a copy of the indictment on file in the above entitled action and that he had read said indictment.

That said indictment purports to charge him with a violation of section 215 of the Criminal Code of the United States; that said indictment contains and is almost entirely composed of allegations of acts alleged to have been committed by defendant; that these acts are alleged in general terms and the indictment fails to allege the time, place or circumstances necessary to an identification of any of the acts so alleged; that he has been informed by his attorney, H. H. HARRIS, ESQ., and upon such information believes and alleges that unless he

(Testimony of J. W. Alford.)

is furnished with a bill of particulars which shall particularly and specifically inform him of the exact time when said acts were committed, of the particular place where said acts were committed and of the circumstances surrounding the commission of these acts that he will be unable to properly prepare his defense or to prepare any defense at all.

J. W. ALFORD

(JURAT)

That thereafter and on the 27th day of May, 1929, said motion for a bill of particulars came on regularly to be heard here, whereupon the Court made the following order:

> "Let the record show that the motion is presented for a bill of particulars and the District Attorney states that there are no matters other than the acts and things described in the indictment, which he will seek to prove in establishing the charge either as to the character of the fraudulent scheme as alleged, or any false representations or pretenses connected therewith. The motion, therefore, is denied as to items 1 and 2."
>
> "As to Items 10 and 11 the motion is granted.
>
> "As to Item 18 the motion is granted.
>
> "As to Items 20, 21, 22 and 23 the motion is granted; otherwise denied."

That defendant duly entered his exception to all that portion of the foregoing order denying his respective demands for a bill of particulars.

That thereafter the defendant was furnished with a bill of particulars by the United States giving him the information demanded in Items Nos. 10, 11, 20, 21, 22 and 23 of his bill of particulars and further giving him the information demanded in Item 18 of his demand for a bill of particulars, which said information is as follows:

"SPECIFICATION EIGHTEEN"

"Defendant devised the scheme and artifice set forth in each count of the indictment on or about October 1, 1927, provided he did not enter into negotiations with Guy W. Slack for the purchase of the land described in the indictment on or before that date."

And, be it further remembered, that the above entitled cause being at issue, the same came on regularly for trial before the Honorable William H. Sawtelle, United States District Judge, on ~~May~~ July 18, 1929, whereupon the following proceedings were had:

"MR. FRIEDMAN: May I present a preliminary matter, first, on behalf of the defendant, if it please the Court? In glancing over the indictment I notice that Counts 1 and 4 are the same. Count 4 is a mere repetition of Count 1 in the indictment and alleges the same letters as having been mailed on the same date. In view of that fact, I would move the Government be required to elect as to which of the two counts it will proceed on, and that the other be dismissed."

(Testimony of Guy W. Slack.)

"MR. ARMSTRONG: That is true, your Honor. We will elect the first count. The fourth count may be dismissed."

"THE COURT: Very well."

Thereupon, a jury was duly impaneled and sworn to try the cause, the United States being represented by DONALD ARMSTRONG, Assistant United States Attorney, and the defendant being personally present and represented by LEO R. FRIEDMAN, ESQ.

Thereupon, DONALD ARMSTRONG, ESQ., Assistant United States Attorney, made an opening statement to the jury as to the matters the plaintiff expected to prove.

Thereupon, the United States, to maintain the issues on its part to be maintained, called as its first witness GUY W. SLACK.

TESTIMONY OF GUY W. SLACK FOR THE UNITED STATES

GUY W. SLACK,

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I live in Boise City, Oklahoma. During the year 1927 I had a business transaction with the defendant, J. W. ALFORD, and entered into an agreement with him which was reduced to writing. I have the original agreement

(Testimony of Guy W. Slack.)

with me (witness produces agreement). That is my signature on the last page and that is the signature of the defendant J. W. ALFORD which I saw him append to that instrument. I was present when the acknowledgement was made.

The document identified by the witness was offered in evidence as a Government Exhibit and was admitted and marked Government's Exhibit 1 (the original of which exhibit is before this Court on stipulation and order.

Witness (continuing):

Approximately 30,000 acres of land are comprised in the description set forth in the agreement. I was living in Oklahoma during 1927 and I know that during the year 1927 neither Mr. Alford nor any one else erected a derrick on any of the land described in this contract.

Q. Were you ever paid any money on account of this contract?

A. Yes sir.

Q. How much?

A. $25,200.00

Q. Were you ever paid any more.

A. No sir.

I might miss the date a little as to when this contract was canceled. I couldn't be too sure about that now but the approximate date of this cancelation was between May and September 1927. I gave Mr. Alford a deed to 1680 acres of land described in this contract which are the 1680 acres mentioned in the first provision of the contract. I know of my own knowledge that land was transferred by Mr. Alford to J. St. Paul White. I am familiar with the value of lands ir Cimarron County,

(Testimony of Guy W. Slack.)

Oklahoma, and was during the year 1927. Leaving out of consideration the prospective mineral possibilities or oil possibilities on this land, in my opinion the fair market value of it during 1927 for agricultural purposes was from $15.00 to $25.00 an acre. During 1927 I was familiar with the location of a well in Cimarron County, Oklahoma, known as the Ramsay Well. It was approximately ten miles from the nearest point of the land described in the contract marked Government's Exhibit 1.

Cross-Examination

(By Mr. Friedman)

I am in the banking business in Boise City, Oklahoma, and am President of the Citizens' Home Bank there. For several years I was connected with another banking institution but am not now. I have lived in Boise City, Oklahoma, about a year. The nature of the land described in Government's Exhibit 1 is not rough land. It is from level to what we call or term rolling land. It runs from rather a deep sandy loam to what we term a medium mixed sandy loam land. "A rather large percentage of it is agricultural and a portion of it in our country would be known as choice agricultural land." The lands immediately adjacent to it are used for agricultural purposes. In my opinion it is good agricultural land.

About the month of January 1927, and at about the time Mr. Alford entered into this contract, some oil activity was being shown in the territory surrounding or near this tract of land. There was a drilling well, possibly more than one at that time, but there was one drilling well in Cimarron County.

(Testimony of Guy W. Slack.)

This contract (Government's Exhibit 1) was entered into on the 17th day of January 1927 and the first payment of $25,200.00 was to be made not later than thirty-one days thereafter. Between the time of the entering into of the contract and the making of the first payment a change occurred in the oil situation in that vicinity. The well drilling when the contract was made was in territory where there was no production but it came in in a well with a showing of oil during that time. On the coming in of this well the general atmosphere of the locality considerably changed and an oil boom of more or less proportions occurred. Several other derricks were erected within a few weeks or months and trading in leases and options grew and became very active. About the time I entered into this agreement with Mr. Alford I had other offers for an option on this land.

I caused Government's Exhibit 1 to be prepared under my attorney's guidance. I was not the sole owner of this property. The title of record to all the land was and is in my name. The actual ownership is in myself and four associates. After entering into this contract Mr. Alford left within a day or two. I next saw him on the thirty-first day after the date of the contract at Boise City, at which time he paid to me the sum of $25,200.00. Mr. Alford was accompanied on that occasion by J. St. Paul White. The money was paid to me in cash. I do not recall when the Ramsay Well came in but it was before the $25,200.00 was paid and after the agreement had been entered into.

After the Ramsay Well came in I had a conversation with Mr. Alford at Boise City when he came to pay

(Testimony of Guy W. Slack.)

the $25,200.00, it might have been the next day, relative to Mr. Alford surrendering his option. In substance I told him that we were considering his surrendering his option. The fact was that we would have been pleased to drop the contract. I think I intimated to Mr. Alford that we might, on a suggestion that had come to us, be able to dispose of the property under the conditions then prevailing at some price such that we would be willing to take care of him for a reasonable amount of money. As I have it in mind it was around four to seven or eight dollars an acre so far as I was concerned. I will say four to six dollars an acre that we thought possibly we might be able to dispose of the land and take care of him on such a basis as that.

Q. As I understand it, in order to get the matter clear for all concerned, at this time you told him in substance that if he would surrender the contract, you thought this option could be disposed of so as to bring Mr. Alford a profit of from four to six dollars an acre?

A. Something along that line. As I have it in mind now, that is about the way it really happened.

Q. And 30,000 acres of the tract would bring at a minimum, under your figures, $120,000.00 to Mr. Alford.

A. That is, roughly, yes sir.

Q. What, if anything, did he say to that proposition?

A. He didn't surrender the contract.

Q. And he didn't accept it.

A. No sir.

After Alford had paid me this $25,200.00 I executed a deed to him for the first 1680 acres. At the time of the payment of the $25,200.00 I understood Alford had

(Testimony of Guy W. Slack.)

gotten the money from Mr. White. Nothing was said at that time as to what Mr. White was to get as to any interest in this proposition.

After the payment of the $25,200.00 and after Mr. Alford left Oklahoma a change occurred in the oil situation in the vicinity of this land. Within thirty days of the time Alford was there the discovery well had an oil well fire and burned up the derrick. The people drilling the well had some trouble with their well and with the hole and after the burning of the derrick they apparently lost their well. The boom which we had had pretty well subsided within a few months.

After the payment of the money Mr. Alford came back to Boise City and Oklahoma City, Oklahoma, in the latter part of March or April 1927. So far as I know he came alone. At Oklahoma City I had a conversation with him relative to the option at which conversation my associates were present. Mr. Alford said he was having difficulty in meeting the terms of the option agreement (Government's Exhibit 1) and he came seeking a new contract with more liberal payment time and terms. The conversation all centered around that matter. At that time we made a new contract with Mr. Alford under certain conditions. This new contract was reduced to writing, a copy of which I have with me (witness produces contract). This is the second agreement dated May 2, 1927 (the agreement produced by witness was offered in evidence, admitted and marked Defendant's Exhibit A, the original of which is before this Honorable Court by stipulation and order). This agreement of May 2, 1927 changed the terms and amounts

(Testimony of Guy W. Slack.)

of payments that would be required. It was signed and executed by me and by Mr. Alford and he signed it the same time I did. There were certain conditions agreed upon between me and Mr. Alford which had to be performed before this second option agreement should become effective and they are not contained in the agreement itself. No payments were made on this second contract. An executed copy of this second contract was never delivered to Mr. Alford.

Re-direct Examination

(By Mr. Armstrong)

The crops grown on land such as described in Government's Exhibit 1 are small grains including wheat and barley, Indian corn and maize and other forage crops. These crops are not ordinarily grown in Oklahoma on from one to ten acre tracts. I am engaged in the farming business in Oklahoma and I do not know of any operations there where an individual has planted such crops as I have described on one to ten acre tracts. The distance between the well that I have testified to as having been burned and the nearest point of the land involved here I believe to be ten miles and that was the nearest point of drilling operations to this particular land that I know of at that time. I believe the discovery well rig was burned after the payment of the $25,200.00. Mr. Alford came to me to have this option renewed after the rig had burned.

Re-cross Examination

(By Mr. Friedman)

After the second agreement dated May 2, 1927 was signed I sent to Mr. Alford a letter relative thereto

(Testimony of J. St. Paul White)

which is the document you have just handed me. (the letter identified by the witness was offered in evidence, admitted and marked Defendant's Exhibit B, the original of which letter is before this Court by stipulation and order)

Following the terms of this letter (Defendant's Exhibit B) we have such a release executed by Mr. Alford now. Mr. White also executed such a release but I have no recollection when he did so. I haven't the release with me. There was a period of time that I know of between the execution of a purported release by Mr. Alford and the execution of a purported release by Mr. White. This discovery well was the so-called Ramsay Well. It was not producing on January 17, 1927. It came in between that date and the thirty-first day of the option. The estimate in our newspaper and in all the advertising it got fixed this well as being from a 200 to a 500 barrel well. The date of the fire was after the money was paid. The drilling of the wells provided for in the first agreement were not to be in lieu of the payment of any money. After the Ramsay Well came in there were drilling operations closer to this land than the Ramsay Well and in more than one location. The closest well that was started was approximately two and one-half miles away.

TESTIMONY OF J. ST. PAUL WHITE FOR THE UNITED STATES

J. ST. PAUL WHITE,

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I reside at 346 North Vermont Avenue, Los Angeles, California, and was living at Los Angeles in 1927. In 1927

(Testimony of J. St. Paul White)

I had some business dealings with the defendant, J. W. Alford, which dealings were reduced to a written contract. I have the original of that contract with me. (Witness produces contract) The signatures at the foot of the third page are in the handwriting of myself and Mr. Alford. On the last page the signatures of the signatories are in my handwriting and Mr. Alford's handwriting, respectively, and the witnesses' signatures are in their handwriting.

(The document identified by the witness was offered in evidence by the Government, admitted and marked Government's Exhibit No. 2, the original of which exhibit is before this Honorable Court by stipulation and order).

I paid the $25,200.00 provided for in this contract. I handed it to Mr. Alford just as he and I entered the bank that night. I received the deed to the land described in this contract from Mr. Alford and I have that deed with me. (Witness produces deed) The signatures at the bottom of the deed are J. W. Alford's and Vera Forbes Alford's. The witnesses are Helen M. Beck and Frank J. Mitchell. This deed, as it now appears, was delivered to me by Mr. Alford.

The deed identified by the witness was offered in evidence by the Government, admitted and marked Government's Exhibit 3, the original of which Exhibit is before this Court by stipulation and order.)

To my knowledge no money was ever deposited by Mr. Alford or any one else in any bank according to the provisions of Government's Exhibit 2, which reads: "The first party shall at once deposit said amount re-

(Testimony of J. St. Paul White)

ceived in a bank account to be entitled J. ST. PAUL WHITE, TRUSTEE."

Q. Have you ever made any transfers of that property to any one?

A. Yes.

Q. Did you receive the money for those sales yourself?

A. I have received a partial amount.

Q. Was this sale made through your own efforts?

A. Yes.

Q. And not through the efforts of Mr. Alford or any one else?

A. No; just recently.

Q. It has been recent?

A. Yes.

Q. About when was that?

A. About six weeks or two months ago.

I have never transferred any of this land to any one under Mr. Alford's direction.

On stipulation an order was made substituting a photostat of Government's Exhibit No. 3 for the original.

Cross-Examination

(By Mr. Friedman)

Mr. Alford first called my attention to this option or chance to get an option on the land in Oklahoma early in February 1927 at my office. Mr. Alford and I had known each other for some time prior to that. I had no recollection whether or not Mr. Alford had a copy of his option agreement with him at the time. Prior to the 14th day of February, 1927 I had seen a copy of the agreement Mr. Alford had procured from Mr. Slack

(Testimony of J. St. Paul White)

and was conversant with its terms. I prepared the copy of February 14, 1927. It was signed in my office by Mr. Alford and myself. Within a day or two after we signed this contract we left for Oklahoma, it was the next day as a matter of fact. The first amendment to this contract was made on February 17, 1927; the second amendment was made in Los Angeles after we returned. I know that no money was ever deposited in any bank by Mr. Alford in my name as trustee. I do not know whether there was any money to be deposited to my credit.

I previously said that I had sold some of these 1680 acres. I might amplify it by saying that I entered into an arrangement and had executed and deposited a deed. The transaction is not completed. Prior to this uncompleted transaction I executed a deed to some one else for these 1680 acres. I can't tell very closely when but it was toward the latter end of 1927. The date is merely a hazard on my part. I have some documents showing that transfer but not with me. I transferred all of the land at that time.

After I paid the $25,200.00, I visited the offices of Mr. Alford here for the purpose of ascertaining what business he was doing under these contracts. I did this on more than one occasion. I cursorily inspected the books and kept myself more or less generally informed as to what was going on up until about a week or ten days before the 17th of April when the option agreement lapsed by failure to make the second payment. The second payment was due on April 17, 1927. Prior to April 17, 1927, I had some discussion with Mr. Alford

(Testimony of J. St. Paul White)

relative to the making of this second payment. I endeavored to make arrangements to raise the money necessary to make the second payment and if I had completed my arrangements I might have raised it. My disinclination to do so prevented me from completing this arrangement. Around April 1927, I had recorded the deed from Mr. Alford and his wife to me. My recollection is that I didn't record the agreement of February 14th.

I never at any time informed Mr. Alford that I would make the second payment under the option agreement with Mr. Slack. Alford asked me if I would make that payment and I recalled to him the assurances he had given me before we entered into the arrangement to the effect that after I had made the first payment and we had acquired this acreage that it would be so rapidly sold and we would have so much money by the expiration of sixty days that not only would my $25,000.00 be raised but we would have enough to buy more; and that hasn't been fulfilled or lived up to by a long shot and I told him in view of that that I wasn't disposed to do anything not provided for in the contract. This occurred from two weeks to a week before the expiration of the time allowed for the second payment. During the week or two weeks prior to the time allowed for the second payment according to my recollection I didn't have any communication or discussion of the situation with Mr. Slack. After I informed Mr. Alford that I would go no further in this matter I received some requests from him to the effect that I execute a release of some kind taking my claim off of the 30,000 acres. This was around April 29, 1927, and was in the form of a telegram. I have the

(Testimony of J. St. Paul White)

telegram here and I replied to that telegram. (Witness produces telegram and copy of reply thereto).

(Defendant offered in evidence the telegram and the copy of the reply thereto produced by the witness, which were admitted and marked, respectively, Defendant's Exhibits C and D, the originals of which Exhibits are before this Court by stipulation and order).

Following the telegram I sent to Mr. Alford I received a telegram back from him to which I likewise replied. (Witness produces telegram and reply). Defendant thereupon produced original telegram of the copy marked Defendant's Exhibit D, which was identified by the witness and on stipulation was substituted, in place of the copy, in evidence.

Witness (Continuing):

The paper you now show me is the original of the reply I sent to the second telegram received from Mr. Alford.

(The second telegram and reply identified by witness were then offered in evidence by defendant, admitted and marked Defendant's Exhibits E and F, respectively, the originals of which are before this Court by stipulation and order).

Exception No. 2

Q. Following those telegrams, Mr. White, did you execute a release or quit claim as asked for by Mr. Alford?

A. Yes.

Q. When did you do that?

A. May I refresh my memory?

Q. Yes.

(Testimony of J. St. Paul White)

A. August 17, 1927.

Q. August 17, 1927. These telegrams were in April, as I understand it. Between April and August, 1927, did you refuse to execute such a document for Mr. Alford or for Mr. Slack?

A. No.

Q. Did you couple any conditions of any kind to your executing such a document?

MR. ARMSTRONG: I don't see how that is cross-examination, Your Honor, as to something that transpired in August or between April and August, particularly in view of the fact that is quite apparent from the examination so far that this deal didn't go through.

MR. FRIEDMAN: Of course, I have offered no objection, but I don't know why Mr. White was put on by the Government. He was put on for some purpose. I am merely trying to find out for the benefit of the jury what that purpose was.

THE COURT: If that is the object of your examination, I will sustain the objection.

MR. FRIEDMAN: That is one object, and the other is to lay before the jury and develop it, the entire transaction that occurred between Mr. Alford and Mr. White as far as pertains to the Oklahoma land.

THE COURT: I will sustain the objection.

MR. FRIEDMAN: An exception.

Mr. Friedman then handed a document to the witness and asked him if he had ever seen it before, to which query the witness replied.

A. It looks like a draft of a preliminary—that is a preliminary draft of the agreement we made, which was

(Testimony of J. St. Paul White)

very radically altered, however, in the executed agreement.

(On request of defendant the document just identified by the witness was marked Defendant's Exhibit G for identification).

Re-direct Examination

(By Mr. Armstrong)

In the telegrams I have testified to, the mention made therein of a defaulted sales contract referred to the option agreement between Mr. Slack and Mr. Alford.

TESTIMONY OF DOROTHY C. WEBER FOR THE UNITED STATES

DOROTHY C. WEBER,

DOROTHY C. WEBER, produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I now reside in Los Angeles and was living there in 1927. I was employed in September 1926 by J. W. Alford, the defendant, as a stenographer and worked until November and then in 1927 I went back in his employ in February and worked until July. I did Mr. Alford's work. In February 1927 there was employed in the office besides myself, Mr. Cameron Bradley, as bookkeeper and Miss Roberta Green as a stenographer. I remember a number of salesmen who were employed by Alford & Company and who were there in the office. Mr. Brubaker was one, Mr. Moxness was another, and Mr. Broadhead

(Testimony of Dorothy C. Weber)

worked there for a short time as sales manager. Mr. Russell was sales manager or assistant sales manager; Mr. Jackson was also sales manager or assistant sales manager; Mr. Aldrige and Mr. Elrick as salesmen; Mr. Hudson was a lecturer and Mr. Henderson was a salesman. I remember the name Mr. Gale but I don't remember him. Mr. Miller was a salesman. I don't remember Mr. Newcombe but the name is familiar. Miss Sonia West was a saleslady and Mr. Pierce was a salesman. I took the dictation of Mr. Alford.

As to the letter and envelope you show me, the letter being on the letterhead of J. W. Alford & Company, dated May 18, 1927, I remember the name and my initials appear in the corner so I very likely did it. The signature on the bottom of the page is Mr. Alford's. I was employed there at the time that letter bears date. The type in which the letter is typewritten is the type of the machine I was using at that time. There was no one else in the office using the initials that appear in the lower left hand corner. That is the usual set-up of my letters and that is the letterhead that was ordinarily used by the office at that time. I am able to say that I did the dictation of that letter. I know I took that. I know I mailed this letter because I am very positive Miss Green didn't work there on May 18, 1927. (The letter testified to by the witness and dated May 18, 1927 was marked Government's Exhibit 4 for identification).

The letter you show me on letterhead of J. W. Alford & Company, dated May 24, 1927, is one that I took the dictation of. I am almost positive I mailed this letter. I may be wrong about the date when Miss Green left

(Testimony of Dorothy C. Weber)

there but I don't think she left there in May. Either Miss Green or I mailed all the letters that were written. I very likely mailed this because I don't think she worked there then. The signature on the bottom is Mr. Alford's. (The letter dated May 24, 1927, testified to by the witness was marked Government's Exhibit 5 for identification).

The letter you show me dated April 1, 1927 on the letterhead of J. W. Alford & Company is one that I took the dictation of from Mr. Alford, whose signature appears at the bottom of the letter. I cannot say whether I mailed this letter or not but I would say it was mailed either by Miss Green or myself because we girls always mailed them. Either I or Miss Green mailed all the letters that were written. (The letter dated April 1, 1927 was marked Government's Exhibit 6 for identification.)

The letter you show me dated May 24, 1927, on the letterhead of J. W. Alford & Company is one I took the dictation of from Mr. Alford and that is his signature. I think I mailed that letter. (The letter dated May 24, 1927 was marked Government's Exhibit 7 for identification).

The letter and envelope you show me dated May 18, 1927 is one I took the dictation of from Mr. Alford and that is his signature at the bottom of the letter. I would say I mailed that letter. (The letter dated May 18, 1927 was marked Government's Exhibit 8 for identification).

The letter you show me dated May 18, 1927 on the letterhead of J. W. Alford & Company is one I took the dictation of from Mr. Alford and that is his signature at

(Testimony of Dorothy C. Weber)

the bottom. I would say I mailed that letter. (The letter dated May 18, 1927 was marked Government's Exhibit 9 for identification).

The letter you show me dated June 1, 1927 I took the dictation of from Mr. Alford. That is his signature at the bottom. I mailed that letter. (The letter dated June 21, 1927 was marked Government's Exhibit 10 for identification).

The letter you show me dated May 18, 1927 on the letterhead of J. W. Alford & Company I took the dictation of from Mr. Alford and that is his signature at the bottom. I very likely mailed that letter. (The letter dated May 18, 1927 was marked Government's Exhibit 11 for identification).

The letter you show me dated May 19, 1927 on the letterhead of J. W. Alford & Company I took the dictation of from Mr. Alford and that is his signature. I very likely mailed that letter. (The letter dated May 19, 1927 was marked Government's Exhibit 12 for identification).

The receipt you show me dated May 20, 1927 is in my handwriting. (The receipt marked Government's Exhibit 13 for identification).

The receipt you show me dated June 21, 1927 attached to the yellow card with some pencil writing on it is in my handwriting as is also the pencil writing on the card. (The receipt and card were marked Government's Exhibit 14 for identification).

(Testimony of Dorothy C. Weber)

Cross-Examination

(By Mr. Friedman)

I was in the employ of Mr. Alford from February until July 1927. Government's Exhibit No. 12 for identification was dictated to me in the usual way that letters are dictated. I took it down in shorthand in my notebook.

I don't remember just what I said as to the mailing of Government's Exhibit 12 for identification. I know that letter was mailed because I mailed all the letters that were written and I can't say there was any reason why I shouldn't expect it wasn't mailed. I don't know that it was mailed. I do not know that Government's Exhibit 11 for identification was mailed but I am positive it was. I will have to admit that I don't know it was mailed.

I don't know of my own knowledge that the letter marked Government's Exhibit No. 10 for identification was put in the mails.

I do not know of my own knowledge that the letter marked Government's Exhibit 9 for identification was put in the mails.

As to Government's Exhibit 8 for identification, I do not know of my own knowledge whether that identical letter was in that envelope when the envelope was placed in the mail or not. I do not know of my own knowledge whether Exhibit No. 8 for identification was ever placed in the mails.

I do not know of my own knowledge whether Government's Exhibit No. 7 was ever placed in the mails.

I do not know of my own knowledge whether the letter marked Government's Exhibit No. 6 for identification was ever placed in the mails.

(Testimony of Dorothy C. Weber)

I do not know of my own knowledge whether the letter marked Government's Exhibit 5 for identification was ever placed in the mail.

As to Government's Exhibit 4 for identification, which has an envelope attached to it, I do not know of my own knowledge whether that letter was ever placed in the mails.

Redirect Examination

(By Mr. Armstrong)

I am positive all those letters were mailed.

In reply to questions asked by the Court, the witness testified in substance as follows: It was my position in the office there to mail letters and if any one else might have done it, it might have been Miss Green or otherwise I did it. I don't remember when Miss Green was there but I think it was during March and April of 1927. One or the other of us mailed all the letters that went out and I think I mailed most of them, but I am saying if I didn't I think Miss Green might have mailed some of them.

Recross Examination

(By Mr. Friedman)

I testified that I wrote these letters which are Government's Exhibits 4 to 12, inclusive, for identification. They were then turned over to Mr. Alford to sign. I do not know whether they were the only letters turned over to him to sign at that time. I know Mr. Alford gave all the mail back to me that was given to him to sign. I didn't count the letters when they were given back to me by Mr. Alford.

Q (By Mr. Friedman) Just to bring this to a close, I will ask you once more, Miss Weber, as you sit there,

(Testimony of Roberta Green)

do you know of your own knowledge as to whether any of these letters were put in the mail?

A. No.

TESTIMONY OF ROBERTA GREEN FOR THE UNITED STATES

ROBERTA GREEN,

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

In 1927 I was living in Los Angeles. I was employed by J. W. Alford & Company from February to April 1927. I was employed by Mr. Alford as stenographer for different people. I never took any dictation from Mr. Alford. I did take dictation from Mr. Broadhead, Mr. Jackson and from different salesmen. As to the paper you show me entitled sketch of sales talk on Panhandle Petroleum Acres, I have written papers similar to these. I do not say I wrote this particular one. I should say I have written more than one like that. I do not know how many I did write. I wrote them at the direction of Mr. Broadhead or Mr. Jackson. (The document just testified to by the witness was marked Government's Exhibit 15 for identification.) As to the second document you show me entitled sketch of sales talk on Panhandle Petroleum Acres, I could not remember that I wrote any documents identical to that.

The carbon copy of the letter dated March 18, 1927 I cannot remember. The initials R. G. on the last page

(Testimony of John Pearson Broadhead)

of the letter were the initials I usually used in writing letters in that office and I was in the office at the time that letter was dated. Part of the time I used a machine that had type like the type used in that letter. As far as I know no one else in the office used the initials R. G. There was no stenographer in the office that had the initials R. G. (The carbon copy of a letter dated March 18, 1927 was marked Government's Exhibit 16 for identification).

The letter you show me dated February 15, 1927 looks very much like my type and I would say I wrote it at the dictation of Mr. Jackson. I believe that is Mr. Jackson's signature at the bottom of the letter but I am not sure. (The letter dated February 15, 1927 was marked Government's Exhibit 17 for identification).

Thereupon an adjournment was taken until Friday, July 19, 1929, at the hour of ten o'clock A. M.

On Friday, July 19, 1929, the trial was resumed and thereupon the following proceedings were had.

TESTIMONY OF JOHN PEARSON BROADHEAD FOR THE UNITED STATES

JOHN PEARSON BROADHEAD,

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I live at 2801 Seventh Avenue, Los Angeles, and was residing in Los Angeles during 1927. I was employed

(Testimony of John Pearson Broadhead)

by J. W. Alford in February and March 1927. At the time Mr. Alford employed me I had a conversation with him on several occasions. The first conversation with him was in reference to my employment and was before I actually began with him. Mr. Jackson was present at one or two such conversations. The sum and substance of the conversation that took place on the very last days of January, and the first day of February, was that I was engaged as sales manager. The terms were arranged and it was understood that Mr. Jackson was to be associated with me, keeping an observant eye upon the performance of the operations of the sales force and would report naturally, of course, to Mr. Alford, as it was understood, from time to time concerning my operations. Mr. Alford told me that Mr. Jackson was his right hand man in such a capacity. Mr. Alford told me we were to sell oil land in Cimarron County, Oklahoma, that this land was in process of purchase, that it was his land, that he could sell it, that I was engaged as sales force so to do. Mr. Alford said there were to be three test wells drilled, one near the middle of the 30,000 acres, one toward the lower part of it and another toward the upper part. Mr. Alford told me the investors were to receive a deed to the land they bought. There were several conversations with Mr. Alford regarding sales literature. They occurred from time to time. I can fix the place of these conversations. They generally were in Mr. Alford's office but I can't remember the time so as to say one day or another. At these conversations some times I was alone with Mr. Alford and at other times Mr. Jackson was with us.

(Testimony of John Pearson Broadhead)

The substance of the conversation was that literature was to be employed which would facilitate in the sale of this property and the first thing that was spoken of was the matter of getting out a paper, I believe it was named the Cimarron News. There were conversations regarding typewritten sheet or sheets that we had, which, upon several occasions during my association with Mr. Alford, we called "Alford's Sellergrams", all of which Mr. Alford O. K.'d and endorsed and said that was fine and that was what we should do.

The four documents you show me I have seen before. The document marked Government's Exhibit 9 for identification was prepared by Mr. Jackson.

Exception No. 3

Q. BY MR. ARMSTRONG: Did you ever discuss that particular one with Mr. Alford?

A. As part of the literature that we handled, yes, I did. As a specific thing, just standing out separate and alone by itself, perhaps not, that I can remember.

Q. What was said between you and Mr. Alford in connection with it?

A. That he endorsed this manner of sales approach.

Q. BY THE COURT: How would you designate that? As a circular? I haven't seen it.

MR. ARMSTRONG: It is just a typewritten three-page document, your Honor.

THE COURT: It is Exhibit 9?

MR. ARMSTRONG: It is Exhibit 9 for Identification.

THE COURT: All right.

(Testimony of John Pearson Broadhead)

MR. ARMSTRONG: At this time, if your Honor please, I offer Government's Exhibit 9 for Identification in evidence.

MR. FRIEDMAN: I will object to it on the ground the proper foundation has not been laid, in that it hasn't been shown that that particular document was ever shown to Mr. Alford or that he had any knowledge of it at all. And I will call the Court's attention to the witness's answer just given a few minutes ago in reply to the Court's query that, as to that particular paper, he couldn't say whether there was any conversation with reference to it or not.

THE COURT: He did state that, and then he also stated, as I recall it, that it was approved by Mr. Alford.

A. Your Honor, as constituting part of the literature, it was approved by Mr. Alford.

THE COURT: Overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit 9 for identification was then admitted in evidence, marked Government's Exhibit 15 in evidence, the original of which is before this Court by stipulation and order).

Government's Exhibit 15 in evidence was gotten up for the salesmen to be distributed to them.

Exception No. 4

Q. With reference to the document you hold in your hand, Mr. Broadhead, do you recall ever having discussed that matter with Mr. Alford?

A. I do.

Q. Did he see that particular document?

(Testimony of John Pearson Broadhead)

A. He saw the copy of this document.

Q. Where did you discuss it with him; in his office?

A. In his office.

Q. Was anyone present besides you and Mr. Alford?

A. Mr. Jackson.

Q. About when would you say that was?

A. This, to the best of my memory, would have been about two weeks or three weeks after my engagement to Mr. Alford, approximately.

Q. Just state the substance of the conversation that took place there at that time with reference to this document.

A. The conversation, to begin with, was in reference to the operation of this as a principle. It was in the matter of printing, and the best up-to-the-minute information and encouragement—everything that we could get together that would be helpful in the matter of making sales. And I suggested this name "Sellergrams," which Mr. Jackson and Mr. Alford both felt was quite a fitting term to use. And as result of that, this copy of the Sellergrams came out, printed by the typist in the office.

MR. ARMSTRONG: The document entitled "Alford's Sellergrams," just identified by the witness, is offered in evidence.

MR. FRIEDMAN: To which we object as incompetent, irrelevant, and immaterial, and from the cursory glance I have able to give to it, it appears it is not within the issues of the indictment or in the bill of particulars furnished by the Government.

THE COURT: There seems to be some pencil notations on it

(Testimony of John Pearson Broadhead)

MR. ARMSTRONG: I am not offering the pencil notes; I am just offering the typewritten portion.

THE COURT: The objection is overruled.

MR. FRIEDMAN: An exception.

(The document was then admitted in evidence and marked Government's Exhibit 18 in evidence).

This document which I hold in my hand was drawn up by Mr. Jackson. I had a conversation with Mr. Alford on the general subject of sales literature in the earlier part of my employment. Mr. Jackson, Mr. Alford and I were present. At that time it was said with reference to all of the sales literature in general that it was to be presented to Mr. Alford for his endorsement before it could be let loose. This particular piece of literature was given to the salesmen. (The document testified to by the witness was marked Government's Exhibit 19 for identification).

I recall having talked with Mr. Brubaker, who was a salesman employed by Mr. Alford, concerning a Mr. C. O. Davis. I talked with Mr. Alford concerning C. O. Davis in Mr. Alford's office around the first part of March 1927, at which conversation Mr. Brubaker was present. Mr. Brubaker stated that Mr. Davis who was in the employment of the Examiner office was unable to give his time to come to see Mr. Brubaker regarding the matter of purchase of some of the Panhandle Petroleum Acres. Mr. Brubaker requested a letter be sent to Mr. Davis which would outline the proposition and make plain to him the situation as it was in reference to the purchase and made that request to me, which request I carried out and drew up a form of letter. This is the letter. This

(Testimony of John Pearson Broadhead)

is a copy of the letter. I drew it in longhand and Mr. Alford looked at it and said "That is all right" and I returned it to Mr. Brubaker. I cannot say I know whether the letter was ever mailed.

MR. ARMSTRONG: For the purpose of the record, the witness has been testifying concerning Government's Exhibit 16 for identification.

WITNESS (Continuing) I had a conversation with Mr. Alford concerning a warranty deed in his office after the first three or four weeks of my identification with him. It was the last part of January; it was spoken of on several occasions. Mr. Jackson was present on one or two times when it was spoken of. I went to Mr. Alford and told him of the sales people's request as to what about a deed which the purchaser of the property would receive upon completion of their purchase price. Mr. Alford assured me that a warranty deed would be in order and would be given to each purchaser. Later on Mr. Alford showed me a deed a week or two weeks approximately after this conversation. He was quite elated. He said "I have a warranty deed, here it is" and held it in his hands and showed it to me. He said the warranty deed was for his 30,000 acres, for his property.

Exception No. 5

Q. I show you what purports to be a map, Mr. Broadhead, and ask you to examine that and state if you have ever seen that before.

A. I have seen copies of this map.

Q. Identical copies?

A. Identical copies, as nearly as I can perceive.

Q. In whose hands did you see those?

(Testimony of John Pearson Broadhead)

A. Mr. Alford's, first of all. It was part of our literature.

Q. Did you ever discuss that map with Mr. Alford?

A. Yes; in the progress of events.

Q. Did the maps all have the same coloring on them? It appears that certain red ink pen marks appear on them, and also certain crayon marks. Were those pen marks and crayon marks on the maps that you saw?

A. Some of the maps were marked in different ways. It seemed that each salesman more or less would mark his map as he was pleased to. But it all bore out the general instruction from the office, under Mr. Alford, as to what was to be contained on the map.

MR. FRIEDMAN: I ask that go out as being the opinion and conclusion of the witness.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

(Map just testified to by the witness was marked Government's Exhibit 20 for identification).

I have seen copies of this second map you show me which were identical apart from the pen inscription. I saw them in the offices of Alford & Company. They were part of our literature,—the literature given to salesmen and carried in their kits. (The second map identified by the witness was marked Government's Exhibit 21 for identification).

Mr. Russell was a salesman in the office. Mr. Henderson was a salesman. Mr. Moxness, Mr. Aldrich, Mr. Mueller, Mr. Gale and Mr. Newcombe were salesmen and Miss Sonia West, Mr. Pierce, Mr. Kroeger and Mr. Miller were also salesmen.

(Testimony of John Pearson Broadhead)

Cross Examination

(By Mr. Friedman)

I went into the employ of Mr. Alford in the early part of February 1927 and continued there until the early part of March. I left because Mr. Alford thought he could get along better without me than with me. During the time I was there Mr. Alford might have found fault with the way in which I was conducting my office. I left at Mr. Alford's request. Mr. O. P. Henderson introduced me to Mr. Alford. My duties were as sales manager to engage salesmen, build up a sales force for the handling or selling of Panhandle Petroleum Acres; my other duties were to hold meetings with the salesmen from day to day and it was part of my duties to become acquainted with the facts relating to the properties. To ascertain these facts I inquired of Mr. Alford. I cannot recollect having been shown any documents by him. I may have, and naturally would have made inquiries of Mr. Jackson. Mr. Jackson showed me nothing in the way of documents relative to the acreage in Oklahoma. I was partly told by Mr. Alford the manner in which he or the J. W. Alford Company was acquiring this property. This was in the beginning of my conversations with him relative to my employment and before I actually went into his employ. At that time he told me he was buying this property from a man named Slack. He did not specify in the fullest detail the manner in which he was buying it and he never volunteered to tell me how much he was paying for it. Alford said he was making—which might be construed present or future—that he was making time payments on it. He told me that he had an option on the

(Testimony of John Pearson Broadhead)

land, where it was and that it consisted of 30,000 acres. He told me that the land up to that time had been used for grazing purposes. He never told me that any drilling for oil had actually been done on this property up to that time. He said the J. W. Alford Company were drilling wells on the property. This was in the latter part of February. He said he was driling three wells. In proof of it there was then the Superintendent in our office quite constantly during these days, in confirmation of it, that that was his plan to do. He said that Mr. Carter was the man who was going to do it. During this period of time there was a Mr. Carter quite constantly in the offices and he was there relative to making plans for the drilling of wells upon this property. Mr. Carter had seen the property. Mr. Carter was in and out of the office for several weeks quite constantly every day. He was still accustomed to come in when I left. I first saw Mr. Carter during February and he had already visited the property in Oklahoma. I do not recall any further conversations with Mr. Alford relative to oil wells on this land.

It was part of my duties, under Mr. Alford, to see what literature the salesmen received. By that, I mean under Mr. Alford's oversight and under his approval. After Mr. Alford had approved something his directions then would be carried out. As far as the office was concerned it was also part of my duties to see that the salesmen got no literature that was not approved by him. I did not inspect every salesmen's individual kit. Mr. Jackson did some of it. Mr. Alford O. K's the kits that were given to the salesmen.

(Testimony of John Pearson Broadhead)

Meetings of the salesmen were held in the office once a day. These meetings were for the purpose of disseminating information, anything that could be given to the salespeople to help them in making sales. At these meetings there were descriptions and explanations given about the property and about oil conditions; general information of that character describing the property. This was told to the salesmen in part by me, in part by J. B. Hudson, and by another gentleman whose name I have forgotten; Mr. Jackson and Mr. Alford would come in some times and declare what he wished done. At these meetings I told the salesmen that Mr. Alford had an option on the land, that he was engaged in the purchase of the land. I first told this to the salesmen the first time I had a meeting of salesmen which was the next day after my employment there.

(Witness is shown Government's Exhibit 15 in evidence). Mr. Jackson wrote that instrument. He told me he did. Mr. Jackson wrote several other documents outlining sales talks that I know of. I wrote some myself; Mr. Alford wrote some. It is not a fact that the salesmen would almost weekly draw up a plan of sales talk and submit it for approval. I do not know of Mr. Brubaker having drawn up any plans of sales talks. I first saw Government's Exhibit 15 within a few minutes after Mr. Jackson approved it. I do not recall that I ever, specifically, had any talk with Mr. Alford relative to Government's Exhibit 15. By specifically, I mean this document itself apart from all others, all literature in general was endorsed by Mr. Alford. This was part of our general field literature committed into the hands of

(Testimony of John Pearson Broadhead)

the sales people. When I say literature in general was endorsed by Mr. Alford, I mean all the way from maps to the paper, to Alford's Sellergrams, to those Approach Sales Talks, all literature that went into the kits of the salesmen. I now state there was nothing to go into the kits of the salesmen except those things which had been expressly approved by Mr. Alford. Personally I cannot say that I showed this (Government's Exhibit 15) to Mr. Alford.

Exception No. 6

Q. BY MR. FRIEDMAN: Will you state, Mr. Broadhead, in what manner Mr. Alford personally approved of this particular document, Government's Exhibit 15?

A. I have already told you that I could not say specifically that he did, to my knowledge; that is, that I did not present it to him.

Q. Then, as far as you know, this particular document, Government's Exhibit 15, was never approved by Mr. Alford?

A. It was approved by Mr. Alford as the general literature was approved, and constituting a part of it.

Q. I am asking you how Mr. Alford approved this document as a part of the general literature.

A. By giving his okay upon the whole of it.

Q. How did he do that:

A. By saying, "That is all right."

Q. Did he say to you that this document was all right?

A. I have already stated that I did not—I cannot say specifically concerning this paper.

Q. That is what I am trying to confine myself to.

A. I have answered that three times.

(Testimony of John Pearson Broadhead)

Q. I am not attempting to argue with you. You would state, then, that he approved of it in general with all the other literature?

A. Yes.

Q. Then I asked you to explain to the jury how he approved all the literature.

A. You asked me how he approved this Exhibit 15.

Q. Yes.

A. That is your question. You didn't ask how he approved all the literature. I told you he approved it all in general, because it was added to from time to time, and he would say that this was okay, and he would hand it back to me and say, "That is okay; fine; go ahead."

Q. That was the way he approved the literature that was to be given to the salesmen?

A. After he had read it through, yes.

Q. But you don't know of your own knowledge whether Mr. Alford approved Government's Exhibit 15 or not?

MR. ARMSTRONG: I am going to object to that. It has been asked and answered several times.

THE COURT: Objection sustained.

MR. FRIEDMAN: If your Honor please, at this time on the direct and cross-examination of the witness, I move that Government's Exhibit 15 be stricken from the testimony and from the record and the jury be instructed to disregard it on the ground the proper foundation has not been laid for its admission, and on the further ground there is no proof showing this was ever presented to or approved by Mr. Alford or that he ever had any knowledge thereof.

(Testimony of John Pearson Broadhead)

MR. ARMSTRONG: If your Honor please, in cases of this kind a defendant is bound by the acts and declarations of his agents.

THE COURT: I will overrule the objection. I don't care for any argument.

MR. FRIEDMAN: An exception.

I read Government's Exhibit 15 myself. I first saw it within the first two or three weeks of my employment. It might have been before or after or during my conversation with Mr. Alford relative to the oil wells.

I drew up this letter which is Government's Exhibit 16 for identification, based upon the intelligence which Mr. Alford gave me. At the time Mr. Brubaker and I discussed this Government's Exhibit 16 for identification and discussed the writing of it with Mr. Alford, Mr. Alford did not tell me what to say in the letter. I drew the letter up at the request of Mr. Brubaker, embodying to the best of my ability the knowledge and all the information necessary that would be of assistance to Mr. Davis, to be passed on to Mr. Alford for his approval. In other words, I used all the accumulated facts that had come to my attention up to that time. This letter was presented by me to Mr. Alford after I wrote it in longhand. Subsequently it was typed. I cannot say whether the typed copy was shown to Mr. Alford because I gave it into Mr. Brubaker's hands.

Mr. Alford showed me a warranty deed. I read it the best I could with him holding it. I did not have it in my own hands. I could not tell whether there was anything in the deed relative to how much land was cov-

(Testimony of John Pearson Broadhead)

ered by it because of the fineness of the print. I saw "warranty deed" in it.

It was part of my duties to supply each salesman with an order book as part of their kit and I presumably became conversant with the terms of the orders to be signed by the purchasers. I cannot recall whether there was anything in the orders relative to a warranty deed. I cannot recall that at the time the salespeople made requests concerning the character or kind of deed that was to be given to each purchaser I examined the orders to see what kind of deed they were to receive. All of the matters that were approved by Mr. Alford to be distributed to the salesmen were both printed and perhaps there were some that were mimeographed but I think the majority of those prepared in the office was done by the typist with carbon copies. The number of salesmen in the employ of Mr. Alford at the time I was sales manager varied. We began work with number one, I think, and at the time I left we had thirty-five or forty approximately.

Q. Just one more question. Isn't it a fact that in all sales talks given to the salesmen that you and Mr. Alford and who ever else addressed the salesmen impressed upon them to use nothing in their sales talks but the truth.

A. Certainly.

Redirect Examination

(By Mr. Armstrong)

That picture you show me is a photograph of Mr. Carter though I never saw the picture before. (The picture was admitted by Mr. Friedman to be Mr. Car-

(Testimony of John Pearson Broadhead)

ter's photograph, whereupon it was introduced in evidence as Government's Exhibit 22, the original of which is before this Court by stipulation and order).

I did not leave Mr. Alford's employ because he told me I was doing something I shouldn't do. Mr. Alford, of course, was naturally very desirous of the best in the way of production from the sales force, of course, which spirit I shared. Mr. Alford would come to me from time to time and make suggestions and constructive criticism of what to do and how to do, all of which I received. Due to the feeling or sense of insecurity, partly, over the deed phase of the business, which I would say was perturbing the minds of the sales people, production fell off as far as the sales were concerned. This naturally agitated Mr. Alford's mind and he came to me ultimately and said "There is only one man in the world who can do what I want to do here and that is J. W. Alford." Mr. Alford maintained it for a few days and by that time, as far as I was concerned, it was all over.

In the various sales talks in connection with the ownership of this 30,000 acres it was stated that Mr. Alford or J. W. Alford & Company owned it according to the setting-forth they gave and the description of it, that it was in process of purchase and they owned it in that sense, 30,000 acres. I did not have the warranty deed in my hands to sit down and study it.

Recross Examination

(By Mr. Friedman)

During my employment with Mr. Alford I finally heard of a man named J. St. Paul White. I accidentally stumbled on to the fact with Mr. J. St. Paul White him-

(Testimony of C. L. Brubaker)

self that Mr. White had an interest on the land that was being sold by the Alford Company. I learned that ultimately as I was leaving but not through Mr. Alford.

TESTIMONY OF C. L. BRUBAKER FOR THE UNITED STATES

C. L. BRUBAKER,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I now live and in 1927 was living in Los Angeles. I was employed by J. W. Alford and in the latter part of January 1927 talked to him about my employment in his private office. There was present, besides Mr. Alford, Mr. Hudson and myself. Mr. Hudson introduced me to Mr. Alford and said he had known me for quite some time and wanted me to become interested in this proposition and wanted Mr. Alford to talk to me himself. Mr. Alford immediately opened up regarding a tract of land comprising, he said, approximately 30,000 acres, situated about eight miles west of Boise City, Cimarron County, Oklahoma. He said there had been quite a lot of oil activity there and this property was just north of some of the experimental drilling, development drilling, and also there was development drilling north of this property. After going into detail regarding the property, its agricultural possibilities, as well as oil possibilities, he told me to think the matter over and if I thought well of it to come back and see him. On our way out he

(Testimony of C. L. Brubaker)

said to Mr. Hudson "Take Mr. Brubaker to Mr. Jackson's office and have him give Mr. Brubaker one of our pamphlets as to the ideals and principles of our company and then that will help him possibly to form an opinion regarding this particular matter as well."

The following day I had another conversation with Mr. Alford in his office; no one else was present. Mr. Alford described to me in what fine shape the land, from an agricultural point of view, was, that it was fenced, that there were two artesian wells and five other wells on the property. In connection with the oil possibillities, he said that with the Ramsay Well lying just north and the information he had been receiving from outside sources regarding the log of the well, showed that well was making a very good showing and also the information regarding the logs of the well south of the property showed up, according to an oil standpoint, very favorably and that there was no reason why this property lying in between the two did not hold just as big possibilities as the properties just north and south. As I recall it, he said the Ramsay Well was approximately six miles from the property.

After I received the sales literature I talked with Mr. Alford about it. The first time I talked to him I got the brown pamphlet; the second day the sales literature, he said, was not ready yet and if I would come in in the morning he would very likely have some of it I could use. I went back the following day and was given the sales literature and about two days later I personally wanted some explanation of the sales literature that I had received. This document, Government's Ex-

(Testimony of C. L. Brubaker)

hibit 15, was given to me by Mr. Jackson on my third call in Mr. Alford's office. Possibly two or three days later I discussed it with Mr. Alford. I made sales of these acreages to my clients. The conversation I had with Mr. Alford about Exhibit 15 was that I asked Mr. Alford where he got the idea of his approach. I said that approach was familiar to me for about twelve years but it had been the first time in quite some time that I had seen any organization using this form of approach. I don't remember that he could tell me how he came about it with the exception that Mr. Jackson and his manager and himself—it was the outcome of their combined efforts. I remember discussing the second paragraph where it starts in with the sales talk; the second paragraph which reads: "You know, to win in the oil game, Mr. Jones, the only way for you and me is to own the land outright, then contract with some responsible producer to drill that property at his own expense, and pay a royalty on all oil produced." In reference to this paragraph, we discussed the size of the property—the size of the individual purchase, laid out in small acre tracts. I took the stand that a person owning an individual acre did not have very much surface and I rather anticipated that there would be quite some argument with the prospective clients on a piece of ground that small. It developed in our conversation, I don't know whether it came to my mind or Mr. Alford's, that the average person would naturally want a square piece of ground and in that instance the purchase, most likely, would be four or eight acres with sufficient surface that it could be drilled very advantage-

(Testimony of C. L. Brubaker)

ously. I did not speak with him at that time about his ownership of the property.

I also talked with him about the last paragraph on the page which reads as follows. "Though we believe that this acreage is underlaid by the same pool that underlies Hutchinson County and the other counties that are productive in the Panhandle, we wish to do our own drilling, consequently making many times more the amount of money than selling out in a solid block would make us. We believe in this property so strongly that we are spending $300,000 of our own money drilling on these same acres, therefore we are taking a much larger chance than we are asking you to take."

I asked Mr. Alford what it cost to drill a well in Oklahoma and he said from information that he had that wells cost on an average of $40,000.00. He said his plan was to drill three wells, starting one on the lower end of the property and if that should not be a producing well, then he would drill the second one in the middle of the property, and if that failed to be a commercial producer he would drill a third well on the northern end of the property.

Along in March, as nearly as I can recollect, Mr. Alford announced to the sales force that Mr. Carter, his superintendent, and driller, was leaving for the property to mark the location and to get the derrick and equipment there to proceed to drill a well.

Exception No. 7

Q. I now show you another Sketch of Sales Talk and ask you to examine that and state if you ever saw that before?

(Testimony of C. L. Brubaker)

A. Yes sir.

Q. Where?

A. It was given out—I believe this one in particular was handed to me by Mr. Jackson about two weeks after my connection there.

Q. Did you discuss that particular document with Mr. Alford; that particular document?

A. At that time is when I brought up the question of how or what the client would have for his representation.

Q. What do you mean by that; for his representation?

A. Well, what kind of a deed or what he would have. This second one is to a very great extent a reproduction of the first.

MR. FRIEDMAN: I ask that go out as the witness' conclusion.

THE COURT: That may be stricken. But what are you referring to now, which exhibit?

MR. ARMSTRONG: This has not been offered yet, your Honor. It has not been marked at all.

THE COURT: Very well.

Q. BY MR. ARMSTRONG: You say that was given to you by Mr. Jackson?

A. I think this second one was handed to me by Mr. Jackson.

Q. I didn't quite get your answer, as to whether you did talk to Mr. Alford about it or not.

A. Yes sir.

Q. You did?

A. Yes, when I got this I asked him—

Q. We will come to that in a moment, Mr. Brubaker.

(Testimony of C. L. Brubaker)

MR. ARMSTRONG: I want to offer this in evidence at this time as Government's Exhibit.

THE COURT: Well, I think that—

MR. ARMSTRONG: I will go ahead further, your Honor.

THE COURT: Go ahead. I have no objection. Is there any objection?

MR. FRIEDMAN: This is the second one you have shown the witness?

MR. ARMSTRONG: Yes; that is right. The first one I showed him was Exhibit 15.

MR. FRIEDMAN: I will object to this on the ground it is incompetent, irrelevant and immaterial and the proper foundation has not been laid, and there is no showing Mr. Alford knew of that or ever saw it.

THE COURT: He has just testified he took it to him and discussed it with him. That is the way I understood the witness.

MR. FRIEDMAN: I didn't understand it that way.

THE COURT: Do you still object to it?

MR. FRIEDMAN: Not upon that ground. I will object to it on the general ground it is incompetent, irrelevant and immaterial and not within the issues of the indictment or the bill of particulars furnished by the Government.

THE COURT: I have read a portion of it, sufficient to see it is material. I will overrule the objection.

(The document was admitted in evidence, marked Government's Exhibit 23, the original of which is before this Court on stipulation and order).

I discussed the top paragraph on page 2 of Government's Exhibit 23 with Mr. Alford, which begins "There

(Testimony of C. L. Brubaker)

is no question but what the J. W. Alford Co. is justly entitled to raise the price of their property which they are offering to the investing public", and which ends "third, from the agricultural development of the surrounding country." I told Mr. Alford I was against raising of the price and he assured me there was no immediate raise contemplated. Then I asked him first, what, in an agricultural way, the property, if any, was producing and he told me there were three sections under cultivation and this led up to how the purchaser's holding would be represented. Mr. Alford said there was a warranty deed and I asked him if it would not be wise for him to have one and he said just as soon as he received the deed from the Recorder's office in Cimarron County he would show all the boys the deeds and any prospects we might have could come there and see it. In the latter part of February, or the forepart of March, about three weeks after this conversation, Mr. Alford, one morning, said he then had the warranty deed and any one wishing to see it could come into his office after the meeting and he would gladly show it to them. This statement was made in the course of the sales meeting. Later, I went into his office and he opened the drawer of his desk and pulled out a two page paper and the top said "Warranty Deed" and he held it like this and I noticed it read to J. W. Alford, showing, as he said, that the deed was made to him and his wife. On it I noticed a lot of figures, sections and numbers and so on and so forth. He turned it over and showed where it had been recorded and that is as much as I saw. He didn't let me have the deed in my own hands, nor did

(Testimony of C. L. Brubaker)

I ask for it. I said that was very good and said "Why not get out some facsmilies of it so we men could have it" and he said that would be coming along in a very few days. Mr. Alford said this deed covered the first 1680 acres which he and his company were the purchasers of.

I used the information contained in Government's Exhibits 15 and 23 in making sales to my clients.

Government's Exhibit 18 was given out at the sales meeting by Mr. Broadhead about a month after I went to work there.

Government's Exhibit 19 for identification came along some time after I had been there two weeks. Every two or three days there would be new ones of this form of literature issued to create new ideas or to impress upon our minds some particular point of what had been expressed in previous literature. I heard Mr. Alford discuss Government's Exhibit 19 for identification at a sales meeting. That document is a copy that I carry.

(Government's Exhibit 19 for identification was admitted in evidence and marked Government's Exhibit 19 in evidence, the original of which is before this Court on stipulation and order).

I sold somewhere between thirty and forty acres of this land in Cimarron County and received a commission of 25% on the sales which was paid out of the first purchase price. The usual down payment was 40%. If a purchaser bought an acre he would pay $40.00 down and I would get $25.00 of that and the balance of $60.00 was payable ten per cent a month.

(Testimony of C. L. Brubaker)

I used the literature that has been introduced in evidence and identified by me in selling these acres. From the number of talks I had with Mr. Alford I believed that the information contained therein was true.

I recall a Mr. C. O. Davis; he was advertising manager of the Los Angeles Examiner. I went to Mr. Alford and said I wished to have him form a letter to Mr. Davis, as Mr. Davis was just a little skeptical as to some of the assertions, and even the sales literature, on the ownership of the property. Mr. Alford informed me that was my sales manager's place and to go to Mr. Broadhead, which I did. At that time I went to Mr. Broadhead and explained the circumstances and requested a letter and Mr. Broadhead formed the letter. I saw the letter go out. Government's Exhibit 16 for identification I have seen before—that is a copy of the letter that was sent to Mr. Davis by myself. The copy was shown to Mr. Alford.

I had several conversations with Mr. Alford concerning his title to this land. The first occurred about two weeks —it was when that second piece of sales literature was given out, I think about two weeks after I had started there. I wanted to know from Mr. Alford the way this land was being acquired. He informed me that 1680 acres had been purchased and paid for and that 1680 acres were what we were selling; that there was an existing contract, where, as he sold, he would purchase additional acreage until the entire tract of approximately 30,000 acres would be purchased by the Alford Company before it would be offered for sale. I recall the sales meeting when the sale of this acreage was started. It was on a

(Testimony of C. L. Brubaker)

Wednesday morning after the middle of the month, along toward the end of April 1927. Mr. Alford addressed a meeting and said we could all hand in our kits, that we would be out of a job, and that the acreage was withdrawn from any further sale. Immediately some of the salesmen wanted to know if they couldn't continue as they had some very good prospects and felt they could close them up by the end of the week and they wanted him to let the sale run on until the end of that week. After some discussion Mr. Alford agreed that he would extend it that far but that all business would have to be in his office by noon Saturday as that was positively the last day of it. He did not state at that time that he was not able to deliver deed to purchasers of this property that had been sold by the salesmen. This occurred after April 17. I made one sale during that time and believed at the time I would be able to deliver a deed to the purchaser. That Saturday fell somewhere around the 20th of the month.

The paper you hand me which purports to be a copy of a page in the Saturday Evening Post I have seen before. It is a part of the first literature given by the Alford Company to the salesmen. It was discussed by the managers and Mr. Alford in meetings several times. (The copy of the page of the Saturday Evening Post was offered in evidence, admitted, marked Government's Exhibit 24, the original of which is before this Court by stipulation and order).

The document headed Panhandle Petroleum Digest, which you have handed me, I have seen before in the salesroom in Mr. Alford's office. I never heard Mr. Alford discuss this particular paper any more than he asked if

(Testimony of C. L. Brubaker)

we were carrying this in our kit and if everybody had it. (That portion of the document entitled Panhandle Petroleum Acres, consisting of the ad of the J. W. Alford Company on the last page thereof was admitted in evidence, marked Government's Exhibit 25, the original of which is before this Court by stipulation and order).

I showed that paper to some of my clients.

The paper which you show me which purports to be a confirmation receipt on the letterhead of J. W. Alford Company I have seen before. It was given by the sales manager to show the purchase, after the purchase, if the order was all right, and their check was signed all right, that it was accepted by the Alford Company. (The document was admitted in evidence, marked Government's Exhibit 26, the original of which is before this Court by stipulation and order.

I sold some of this property to a Mr. and Mrs. Stromberg. I recall an incident of Mrs. Stromberg coming to the office of J. W. Alford & Company to inquire about a deed and I know that she saw Mr. Alford on that occasion, the approximate date of which was March 23, 1927.

During the noon recess I have been able to refresh my recollection as to the date that Mr. Alford advised me the sale was off and we could no longer continue selling these acres and I now think—having refreshed my recollection from a 1927 calendar and an order taken from Mr. O. F. Wilson that it was Wednesday, April 20 that Mr. Alford said the sale of Panhandle Petroleum Acres would cease. It was on that date that the salesmen asked

(Testimony of C. L. Brubaker)

to have it continued and let the sale go to Saturday, April 23.

On Monday, May 23, I had my first conversation with Mr. Alford relative to a so-called Ten-Way-To-Win Syndicate. The conversation started in Mr. Jackson's office and ended out in the general office. I first spoke to Mr. Jackson concerning the subject and he called Mr. Alford to his office. Mr. Alford told me he wanted me to influence the clients I had sold this acreage to to switch into a Ten-Way-To-Win Syndicate that he was going to organize and after quite some talk I told him that I could not honestly advise them to do so and would not. I asked Mr. Alford why he gave up the acreage and he said it had proved, so far as oil value was concerned, a disappointment.

A. And he was organizing this syndicate and transferring the clients from the original land deal into a Ten-Way-To-Win Syndicate, consisting in that he had ten leases of 1000 acres each, and he was going to drill one well in the center of each one thousand acres lease; and as he started to drill the well sell offset acreage to the major oil companies. I told him that I positively could not consistently do that; we would have to go back on all that was said regarding the investment and the safety of the investment to the investor in the sale of the acreage, and I positively would not do that.

At a hearing before the Real Estate Board Mr. Alford stated he had sold approximately 600 acres from the Oklahoma Tract.

I have seen that map which is Government's Exhibit 20 for identification before. It was given to me by

(Testimony of C. L. Brubaker)

either Mr. Jackson or Mr. Broadhead and was one of the first pieces of literature given to us for the sales kit. I discussed with Mr. Alford the "Mercury Oil Company" that appears there in red.

Q. At about what date, as nearly as you can recall it?

A. At the time the map was given to us; and I wanted to know who the Mercury Oil Company was.

Q. What did he say?

A. That was the name of the J. W. Alford Company drilling in the name of the Mercury Oil Company.

Q. Did you pass that information on to your clients?

A. Yes, sir.

MR. ARMSTRONG: At this time I offer in evidence Government's Exhibit 19 for Identification.

MR. FRIEDMAN: We will object at this time to the admission of the map until the locations thereon are explained.

THE COURT: He is merely offering it for identification.

MR. ARMSTRONG: It has been offered for identification and I am offering it in evidence now.

MR. FRIEDMAN: I understood counsel was offering it in evidence.

Q. BY MR. ARMSTRONG: I will call your attention to the red pen and ink drawings or lines on the map and also to the colored crayon marks on the map and ask you if you know who put those marks on?

A. I do.

Q. Who did it?

A. C. J. Jackson or C. G. Jackson; Carl Jackson.

(Testimony of C. L. Brubaker)

MR. ARMSTRONG: The map is offered in evidence.

MR. FRIEDMAN: We will object to it on the grounds it is incompetent, irrelevant and immaterial and does not tend to prove or disprove any issues of the indictment and is not part of the *res gestae* and is without the specifications of the bill of particulars furnished by the Government.

THE COURT: For what purpose is it offered?

MR. ARMSTRONG: If your Honor please, there is a derrick or diagram of a derrick marked "Mercury Oil Company" right in the middle of the Panhandle Petroleum Acres.

THE COURT: Do you mean that you expect to show that?

MR. ARMSTRONG: No. It is on the map. There is a red arrow pointing to Panhandle Acres, and right in the middle of that is a derrick with the wording "Mercury Oil Company." Mr. Brubaker says Mr. Alford told him that was a well being drilled by the J. W. Alford Company.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

(The map was admitted in evidence, marked Government's Exhibit 20 in evidence, the original of which is before this Court by stipulation and order.)

I first saw Government's Exhibit 21 at the time that the linen map was given to us in the sales kit. I did not see the markings on that map made; they were on the map when it was given to me by either Mr. Jackson or Mr. Broadhead. Mr. Jackson instructed me in what sections to make sales; he gave out all the plats with

(Testimony of C. L. Brubaker)
the section number or the acreage number on and we could only sell from those plats that we had. I have not the original of the plat given me by Mr. Jackson but I made a copy of one—a tracing. I gave the original of that plat to Mr. J. W. Russell when the Panhandle Petroleum Acres were withdrawn from sale. I haven't the original now. The two rough plats you hand me are the tracings that I made. I used the original thereof in making sales. I received oral instructions from Mr. Jackson as to the portions of the tract I was to sell in. He told me we could only sell acreage of which we had the plats in our possession; that was in Section 15; plats No. 49 and 50 are the two that I had. I only sold in Section 15.

Exception No. 8

MR. FRIEDMAN: Before cross-examining I desire to ask the Court for an order striking all the testimony of this witness as to the Ten-Way-To-Win Syndicate on the grounds the same is incompetent, irrelevant and immaterial and no proper foundation has been laid for it in this, that the inditcment and the bill of particulars furnished by the Government specify that the Ten-Way-To-Win-Syndicate and everything pertaining thereto was part of the original plan and scheme formed by Mr. Alford, which they place in the bill of particulars as having been formulated on or about the 17th day of January, 1927.

There was no foundation laid and there has been no proof up to the present time that the Ten-Way-To-Win Syndicate ever had any existence in thought or in fact in Mr. Alford's mind or any one else's mind prior to

(Testimony of C. L. Brubaker)

the 23rd day of May, when this witness testified he had a conversation relative thereto. As I understand it, the Government is bound by its specifications as to what this plan and scheme consisted of. If there was a part that occurred in January without any thought of anything that was going to occur the next May, and when May came around and a new plan of operation was evolved, that could not be the plan relied upon by the Government in this case.

The foregoing motion was then argued by counsel on both sides.

THE COURT: The objection is overruled.

MR. FRIEDMAN: Your Honor denied the motion?

THE COURT: Yes.

MR. FRIEDMAN: We will note an exception.

Cross-Examination

(By Mr. Friedman)

I was in the employ of Mr. Alford from the latter part of January until April 23, 1927. My employment terminated because the sale of Panhandle Petroleum Acres was withdrawn from the market and all salesmen were let out. On Wednesday, May 20, Mr. Alford, at a sales meeting, said the sale of the acreage was going to be withdrawn that day. There were no bulletins posted to that effect. After he made the statement the salesmen at a meeting requested that they be given a few days to close up prospective business, which was granted up to the following Saturday, the 23rd. The carbon copy of a notice you hand me I have *see* the original of. It was tacked up on the blackboard after Mr. Alford made the announcement on the floor. There was

(Testimony of C. L. Brubaker)

a bulletin posted after he made the announcement. As far as I know, that is a correct copy of the bulletin. (The carbon copy of the bulletin was marked Government's Exhibit H for identification).

I had a conversation with Mr. Alford prior to my actually going to work for him. That occurred here in his office in Los Angeles and there was present, besides Mr. Alford and myself, Mr. Hudson. Mr. Hudson asked Mr. Alford to go into detail with me about the project.

A. I couldn't give the exact conversation, Mr. Attorney. The sum and substance of the interview was that he explained about having this large tract of approximately 30,000 acres of potential oil land, of good agricultural value; and from his description of it it was worthy of giving consideration to from an investment standpoint.

Q. Did he at that time tell you that he owned this 30,000 acres?

A. He said that the company had purchased a substantial block of the acreage and a very substantial sum of money had been paid; and that as he disposed of the acreage from the funds coming in a certain percentage would be taken, as he had a contract to purchase the balance until he would have the entire 30,000 acres owned —or approximately 30,000 acres—owned by the J. W. Alford Company.

Q. So that before you ever went to work for Mr. Alford you were told that he did not at that time own the entire 30,000 acres?

A. Yes, sir; I was told that.

(Testimony of C. L. Brubaker)

Q. In this first conversation you had with Mr. Alford was anything said about an oil well on the property?

A. I would say yes.

Q. What was said?

A. Well, about developing—it had to show the Alford Company had confidence in the property, that they would develop their own property. A part of that development consisted of drilling first—the first was three wells, if necessary, and establishing a town site.

Q. He told you at that time that it was his intention to drill three wells?

A. Yes, sir; if it was necessary.

Q. Did he tell you that he had already started to drill three wells?

A. No, he did not say he had already started.

With reference to Government's Exhibit 15, either Mr. Jackson or Mr. Broadhead gave it to me. I think it was Mr. Jackson. It was given to me before I actually tried to sell any of the property. I received Government's Exhibit 23 from the same source as the previous one, about two weeks after I had started working for Alford. I had a conversation with Mr. Alford about the entire document marked Government's Exhibit 15, but very particularly with reference to Paragraphs 2, 4, 5 & 6.

Q. What does Paragraph 2 refer to?

A. If I might explain, I am counting the paragraph 2 as excluding the approach here—

Q. I am talking about whatever paragraph you refer to.

A. 'You know, to win in the oil game, Mr. Jones, the only way for you and me is to own the land outright,

(Testimony of C. L. Brubaker)

then contract with some responsible producer to drill that property at his own expense, and pay a royalty on all oil produced.'

As to the conversation I had with Mr. Alford about that, I asked him about the activities shown by the large companies for making leases and whether responsible drillers could be had for drilling acreage and he explained to me that it was unnecessary on account of the Mercury Oil Company, his own oil company, going to drill themselves. It would be impossible for me to say the exact number of conversations I had with Alford relative to Government's Exhibit 15. I had conversations for the first month I was there with Mr. Alford two or three times a week. I was given many pieces of sales literature. In talking about the new pieces that were being handed to us at different times we quite frequently, or invariably, referred back to the first two pieces of literature that were given, because their sales talk was based upon these first two pieces and naturally the bulk of the conversation with him would be to refer to those two pieces. Government's Exhibit 15 in evidence was my personal property before it was turned over to the Government. Those are my initials that appear on the bottom of each page and that is also true of Government's Exhibit 23. Government's Exhibit 18 was also my personal property prior to its being introduced here. It is the same as the two preceding ones—the same answer. The notation on the left hand side of the margin of the first page which read "Read from here especially" is not my notation. I showed this document to my prospects and gave that to them to read and read that to them.

(Testimony of C. L. Brubaker)

Some time after the middle of March 1927 was when Mr. Alford mentioned the fact of Mr. Carter going to visit the property. I sold some of this acreage to Bessie M. McCluggage, William Stromberg, A. W. Petzel, Professor Bentley, Flora B. Nelson, Jennie S. Mueller, Dr. T. L. Mueller, Dorothea Ferris and O. F. Wilson. I sold sixteen acres of this land to a Mr. C. Lee Baker; Mr. Baker was myself. That sale was made in the latter part of February or the fore part of March on Mr. Alford's return from the property. There was a payment made accompanying my order of $10.00 in cash and a post-dated check for $630.00. The check was drawn on the Pacific National Bank. There was no account at that bank at the time under the name of C. Lee Baker or C. L. Baker. The paper you show me is the original order I turned in for C. Lee Baker. That is my name in the lower left hand corner. (The order identified by the witness was admitted in evidence, marked Defendant's Exhibit I, the original of which is before this Court by stipulation and order).

On the 18th day of February, 1927 I was living at 239 North Kenmore. There was no one living there at that time by the name of Baker. That was myself. I am not known under the name of Baker and also under the name of Brubaker. I was only so known in one instance and for one purpose. At the time that contract was entered into I was living at this address under the name of Brubaker. That is the name that apartment was taken under. So far as J. W. Alford & Company is concerned I was known as C. L. Baker because of the form of advertising of J. W. Alford & Company. My

(Testimony of C. L. Brubaker)

commissions were paid me by check and the checks were made payable to me from the Alford Company in the name of C. L. Brubaker. The check I gave accompanying the order for $630.00 was never paid to the Alford Company. It was never presented to the bank for payment. I did not watch the check all the time after it left my possession to see what happened to it. The check was returned to me when the acreage was withdrawn from the sale, on July 23. The $10.00 was not returned to me. Mr. Jackson ordered the bookkeeper to charge that to profit and loss.

Outside of this Baker contract I had an interest in this land with two clients that I sold. They were Miss Bessie McClussage—I had a 15% interest in a six acre sale, and with Mr. and Mrs. William Stromberg I had a 10% interest in a six acre sale. The fact I had an interest in these contracts with my clients was reported to Mr. Alford. I told it to Mr. Jackson and Mr. Alford asked me about it and I said I was taking an interest and he said he wished all the men would do that.

After I joined the sales force of Mr. Alford I attended the sales meetings nearly every morning. I missed possibly a half a dozen in the time I was there. At the start of my connection with Alford & Company there were not over eight to ten salesmen. It got up to at one time so there was over 60 salesmen attended the meetings and then it dropped down so that the last month or so there was in the neighborhood of 25 or 30 salesmen. At these meetings we either listened to a talk from J. B. Hudson, the lecturer, Broadhead, the manager, or Jackson, Mr. Alford's assistant, or Mr. Alford, and some

(Testimony of C. L. Brubaker)

times all of them talked at the same meeting. At these meetings the lecturer and sales managers talked about the company owning the acreage that they sold, Mr. Alford bearing down on it very particularly that they were not selling anything that they did not own. The entire tract of land was absolutely never mentioned at any sales meeting or any conversation with Mr. Alford as being merely held under an option by Mr. Alford. The represensation made by Mr. Alford was that the land that was sold was owned by them, and as they sold what they already owned they had a contract that they could purchase additional land until the entire tract of 30,000 acres would be owned by J. W. Alford Company. So far as I know nothing was ever said to the contrary.

Q. At these sales meetings what was said about oil wells on this land?

A. That was all stressed, the fact that the Alford Company would drill, if necessary, three wells to develop the property.

Q. Was it stated in any of these meetings that there were oil wells being put down at that time?

A. Not being put down at that time; but would be started.

Q. Would be started?

A. Yes, sir.

Q. In the future?

A. In the very near future. The fact of the matter is the date was set when they would start drilling.

Q. Was anything said as to any contingency upon which the drilling would start?

A. Nothing at all.

(Testimony of C. L. Brubaker)

Q. Was anything said at these meetings as to where the funds were to come from for drilling these wells?

A. It was understood—

Q. I am not asking what was understood. I am asking what was said.

A. The acreage was sold to get in funds for the drilling and other development purposes.

Q. In other words, you and the salesmen were told that the drilling and the other developments of this tract was to be done from the funds realized from the sale of the tract itself?

A. Yes, sir.

At one conversation I had with Mr. Alford he told me about the land being fenced and so many sections being under cultivation. He did show me a letter from the Citizens National or Citizens Home Bank of Boise City, I believe, relative to this land. I took that letter and carried it with me and showed it to some of my clients. It was a part of all the sales kits for awhile The document you handed me is a photostatic copy of that letter. Mr. Alford may have given it to me personally but most generally that was given out by either Mr. Jackson or the sales manager. I don't remember when I first saw this letter. (The letter identified by the witness was marked Defendant's Exhibit J for identification).

I never had a conversation about the contract in the name of C. Lee Baker with Mr. Alford. At the conversation of May 23 relative to the Ten-Way-To-Win-Syndicate I was shown at that time some papers or documents which I was to get my customers to sign or attempt to

(Testimony of C. L. Brubaker)

get them to sign. At that time it was partially because of the wording of the contract I objected. The wording of the contract was a secondary consideration. Disregarding the contract I wouldn't have stood for the transferring into the syndicate at that time. I did not demand of Mr. Alford or Mr. Jackson additional commissions if I attempted to transfer my clients from one project to the other.

After I had severed my connections with Mr. Alford the parties I had sold consulted me as to what they should do. I advised each and every one of them to remain by their original contract. I might have advised them, after consulting an attorney, not to take anything but a deed and that if Alford didn't give them a deed that they could stick Alford for heavy damages. I consulted my attorney and it is possible I did on his advice advise them to stand by their original contract and if he couldn't make good it would be up to him to make good in regard to other matters. I might have done that. I won't say positively; I won't say I did not. At the time I so consulted my attorney and was so advised by him I still retained my interests in the Stromberg and McCluggage contracts. After I severed my relations with Mr. Alford many of these contracts of the purchasers that I sold were assigned to me for the purpose of bringing suit for the recovery of money. No damages whatsoever were asked. I still hold those assignments. After I severed my connections with Mr. Alford I, together with four others, registered a formal protest with the Real Estate Commissioner of the State of California against Mr. Alford being given a renewal or a new real estate broker's license. It was at

(Testimony of C. L. Brubaker)

the request of the others that I made the protest. After I severed my connections with Mr. Alford I signed the complaint charging Mr. Alford with a violation of the Corporate Securities Act of the State of California. I did not persuade Mr. Stromberg to sign a complaint charging Mr. Alford with grand theft—Mr. Stromberg did that himself. I don't know whether or not I asked Mr. Stromberg to sign such a Complaint. I may have suggested to Mr. Stromberg that he should have Mr. Alford arrested for grand theft but I won't say whether I did it or not. After I severed my relation with Mr. Alford I asked the City Prosecutor's office of the City of Los Angeles to cite him and have him assure them that he could deliver a deed to our acreage when paid for.

I know a Mr. Moxness. He was a salesman for J. W. Alford & Company. I met Mr. Moxness' wife once or possibly twice. It is not a fact that on the 21st day of August 1927 I had a conversation with Mr. Moxness in the City of Los Angles wherein I told him that I had plenty on Alford and that I was going to get Alford ten or twenty years in jail. It is not a fact that on the 21st day of August I had a conversation with Mr. Moxness at the same time and place wherein I asked Mr. Moxness to sign a criminal complaint against Mr. Alford and it is not a fact that at the same time and place, upon Mr. Moxness' refusal to sign a criminal complaint against Mr. Alford, I asked Mrs. Moxness to persuade Mr. Moxness to sign such a complaint. It is not a fact that at the same time and place, on the 21st day of August 1927, I told Mr. and Mrs. Moxness that I had talked to several of my clients relative to having them sign criminal com-

(Testimony of C. L. Brubaker)

plaints against Mr. Alford. The conversation I had with Mr. Moxness on that day—my clients had been insisting and demanding that we take some action and all the action that we could against J. W. Alford—I very likely told Mr. Moxness that and he came to my house, I did not go to him, and I said if he wanted to join in with us that was his privilege. I won't say I saw Mr. Moxness on the 22nd day of August at the District Attorney's office in this city but I did see Mr. Moxness once in the District Attorney's office. It is not a fact that at the time I saw Mr. Moxness in the District Attorney's office and when he refused to sign a criminal complaint against Mr. Alford that I said to him that he and his wife were a lot of damn fools, that I had spent my time and money to get this complaint and that if Mr. Moxness did not join in the criminal complaint some criminal action might be taken against him. It is not a fact that at the same time and place I told Mrs. Moxness that if her husband didn't get the people he had sold to under the Alford proposition to sign complaints against Alford that Moxness would get into prison himself.

As I sit here I have no ill feeling against Mr. Alford. After Mr. Alford had molested me fourteen times on the street I got a complaint against him and had him arrested for disturbing the peace. He should have been in there on all fourteen occasions. If I had had ill feeling I would have had him in there on all fourteen.

Redirect Examination

(By Mr. Armstrong)

The reason I went to these various public agencies for the purpose of lodging this complaint and having these various contracts assigned to me I will explain as follows:

(Testimony of C. L. Brubaker)

A. After Mr. Alford had them to come and see him, and wanted them to transfer into the syndicate, my suspicion was aroused. I consulted my attorney, and we set in motion to get what information we could gather as to the conditions surrounding the purchase of the property down there; and I also had a bank make an inquiry; and from all that we could get—the information that was given to us—was that Mr. Alford had quite some time before forfeited all his rights to any part of that property, and that we would be unable to get deeds for our purchases. And I first went to the City Prosecutor's office and asked them to cite him and have him satisfy them that delivery of our purchases could be made when paid for. They immediately right then said he should come over to the postal people about it. I let that work along the best I could. I sought the services of the district attorney to us, because there was still some money owing, and my attorney assured me we would have to pay up the balance of our contracts, as Mr. Alford had insisted—

MR. FRIEDMAN: I ask whatever advice his attorney gave him go out.

THE COURT: You may say, "on the advice of my attorney I did thus and so." You need not say what the advice was.

A. The thing was, we still owed some money, and in the contract it said any amount—if the payment wasn't made—any amount could be kept for liquidated damages. And I wanted to protect the money paid and also feel as though we would have some protection after we were paid up, that we would be given our deeds.

(Testimony of William Stromberg)

In connection with the C. L. Baker contract, that contract was taken out at the suggestuon of Mr. C. D. Jackson.

Recross Examination

(By Mr. Friedman)

It is not a fact that Mr. Alford never returned from Oklahoma until the 22nd day of the month in which the Baker contract was drawn. He returned on the morning of the date of that contract, to the best of my recollection.

TESTIMONY OF WILLIAM STROMBERG FOR THE UNITED STATES.

WILLIAM STROMBERG,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I live at 11425 Lang Street, Los Angeles. During 1927 I lived at 2947¼ Leeward Avenue. I contracted to purchase six acres in Cimarron County, Oklahoma, and in that connection I first talked to Mr. Alford's representative, Mr. Brubaker, who just preceded me on the stand. Mr. Brubaker visited me at my home and laid the matter before us during the month of February 1927. My wife was present. Mr. Brubaker went over the prospects of this proposition and said he was offering this land, which was potential oil land in the County of Cimarron, Oklahoma; that it was near a proposed town site; that it was good agricultural land which would soon increase in value, especially as there were wells in the neighbor-

(Testimony of William Stromberg)

hood being drilled at the time. He mentioned one well which he read off this paper which was the Ramsay Well which was within three miles of where we were supposed to be located on that map. We talked over the details of the subject on one, two or three different visits that he came to see me. We didn't decide it at first. At his first visit he stated that Alford & Company would drill some wells, that that was part of the program, that he was going to invest the sum of $300,000. in improving this site and by drilling a well. The well was to be spotted right near the location where we finally decided to buy. After several visits we signed the contract for the purchase. The document you show me is a photostatic copy of the contract and that is my signature at the bottom. That is also Mr. Brubaker's signature, he signed it there at the time. The original is in the possession of the Alford Company. I presume they took it.

(The document identified by the witness and dated February 21, 1927 was admitted in evidence, marked Government's Exhibit 27, the original of which is before this Court by stipulation and order).

I bought six acres in all divided into two contracts. There were two contracts on account of the acreage being in different parts of the tract. They were bought at the same time and signed for at the same time.

(The second contract was admitted in evidence, marked Government's Exhibit No. 28, the original of which is before this Court by stipulation and order.)

The total amount we paid under the contracts was $600., the full amount. I never received a deed to the property described up to the present time. The two instruments

(Testimony of William Stromberg)
you show me on the letterhead of J. W. Alford & Company, I received all those a few days after the contract was closed. (The two documents identified by the witness, being confirmations of the sales, were offered in evidence and marked Government's Exhibit 29, the originals of which are before this Court by stipulation and order).

An adjournment was then taken until 9:30 o'clock in the morning of Tuesday, July 23, 1929, at which time the trial was resumed and the following proceedings had.

THE COURT: After a more thorough and careful examination of the indictment in this case, I have decided to change my ruling on defendant's motion to exclude all testimony with reference to the Ten-Way-To-Win-Syndicate. The motion will be sustained, and all testimony of Mr. Brubaker and any other testimony that may have been offered and admitted in that connection will be excluded, and the jury will not consider it for any purpose. That testimony, in my judgment, is certainly not admissible on the direct examination; whether it will be in rebuttal is a matter that I do not know and pass upon. That testimony might possibly be admissible as tending to show the means by which the alleged original scheme was carried out, but the indictment alleges that it was a part of the alleged original scheme, while the testimony, in my judgment, does not so show. So you may, at least during the direct examination, bear that in mind in offering your testimony.

(Testimony of William Stromberg)

WILLIAM STROMBERG

Direct Examination

Resumed

In my conversations with Mr. Brubaker relative to the purchase of these lands in Cimarron County, he represented that Mr. Alford had actually owned about half of it and was purchasing the balance on option as he sold what he was buying at the time and that if we continued our contract until completed we would be delivered a deed, in fee simple, covering the six acres. The paper you show me is a copy of a letter I received during the month of July, 1927, purported to be signed by the defendant Alford. I do not know where the original is. I haven't asked for it; it is probably in the hands of the attorney on the previous cases—Mr. Ellis of the firm of Ellis & Vickers. (The letter dated July 8, 1927, addressed to the witness, was marked Government's Exhibit 30 for identification).

Government's Exhibit 15 appears to be a copy of a paper Mr. Brubaker had in his hand when he was in my home. He read extracts from it that he wanted to bring out in the sales talk; it apparently is the same piece of paper. Referring to the last paragraph on the first page, Mr. Brubaker read word for word from that paragraph. Mr. Brubaker also had with him and showed to me the ad appearing on page 4 of Government's Exhibit 25 and I read it. I relied upon the representations contained in the ad. I never received a deed for my six acres. Demand for the deed was made by registered mail. I had fully paid the purchase price.

(Testimony of Mrs. Annie B. Stromberg)

Cross Examination

(By Mr. Friedman)

Mr. Brubaker had a one-tenth interest in these contracts for the purchase of this land. Mr. Brubaker did not in the course of our conversations relative to this land tell me how much commission he was receiving for its sale. He visited my home about three or four times, I should judge, before we decided to go into the proposition. I believe Mr. Brubaker said that the J. W. Alford Company were going to start drilling wells immediately. Probably the last time he called upon me we went into the question about the drilling of wells before we signed on the dotted line and that was the time Mr. Brubaker told me that Mr. Alford, or his company, were going ahead with the project as laid down in their prospectus. At the time I signed these contracts I knew that Mr. Alford, or his company, had not as yet started drilling operations on this land.

TESTIMONY OF MRS. ANNIE B. STROMBERG FOR THE UNITED STATES

ANNIE B. STROMBERG,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

I am the wife of Mr. Stromberg. I recall Mr. Brubaker coming to our home in 1927 and trying to interest me in some land in Cimarron County. I recall some of the conversations that took place at that time. It was

(Testimony of Mrs. Annie B. Stromberg)

in February 1927. Mr. Brubaker said it was a wonderful prospect for oil; that Mr. Alford owned half of the land and was going to spend or was spending $300,000.00 to improve it and was going to drill three wells and that it was also a good agricultural deal as well as a town site. Mr. Brubaker showed to me the ad which appears on page 4 of Government's Exhibit 25. I have seen Government's Exhibit 23 At the time Mr. Brubaker was talking to me I either heard or read the substance of what is contained in the last paragraph on the first page thereof. I have not received any deeds to the six acres which were purchased.

Cross Examination

(By Mr. Friedman)

Personally, I did not sign any contract for the purchase of any land, so personally I was not entitled to any deed. Mr. Brubaker showed me Government's Exhibit No. 23 and also Government's Exhibit 15 when he came to the house to sell us the land. I do not recollect whether it was the first or second time. At none of these conversations with Mr. Brubaker did he tell me or make any statement in my presence as to how much commission he was receiving for selling this land. Mr. Brubaker took a financial interest in the land. He said the acreage was so valuable that he would like to get into it, according to Mr. Alford's recommendations and statements. He offered to take a 10% interest in our contracts My husband and I joined in an assignment of all our interests in these contracts to Mr. Brubaker. I don't know that Mr. Brubaker made the suggestion that my husband and I join in the signing of a criminal complaint

(Testimony of Mrs. Annie B. Stromberg)

against Mr. Alford. It was taken to the District Attorney's office and through the District Attorney's office the suggestion was made. A crowd of us went together to the District Attorney's office and Mr. Brubaker was there present. As a result of that meeting my husband signed a complaint charging Mr. Alford with grand theft at the suggestion of the District Attorney, Mr. Shanahan. In our conversations with Mr. Brubaker, he told me that Mr. Alford was drilling three wells at that time and he showed us some maps. He showed me a large map with an arrow on it pointing to Panhandle Petroleum Acres and I saw that map also in Mr. Alford's office when I talked to him. Mr. Brubaker showed me Government's Exhibit No. 20. I do not recall whether it was in the same condition then as now. I saw the arrow on there. I don't know that I particularly saw the markings in red ink. I don't recall the writing in red ink which reads "Three wells to be drilled" underneath the arrow.

Redirect Examination

(By Mr. Armstrong)

Some time in the last of April or the first of May 1927 I went to Mr. Alford's office and talked to him about his ownership in this land. No one else was present. I asked Mr. Alford if he owned the land that we were buying outright and he said he did and he produced a supposed warranty deed and showed it to me. He said it was a warranty deed and it had "warranty deed" on it. I said, "Mr. Alford, is our acreage in this deed and this contract "and he said "It is." I said, "Can we get our land in fee simple when we finish paying for it?"

(Testimony of John R. Gordon)

He said, "You can." The assignment we made to Mr. Brubaker was merely for the purpose of suit.

Recross Examination

(By Mr. Friedman)

I do not recall the exact dimensions of the deed that was shown to me; it was the regular form of deed, I presume. I didn't read it. He showed me the document. This was just before the last payment on the deed and was some time in April or the early part of May 1927.

TESTIMONY OF JOHN R. GORDON FOR THE UNITED STATES

JOHN R. GORDON,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

In 1927 I was living at 1129 South Mariposa Avenue and during that year I made a purchase of land in Cimarron County, Oklahoma, from a salesman of the J. W. Alford Company. I think his name was Aldrich or Eldridge. The paper you show me, which purports to be a subscription blank and which contains the signature of Newton Aldrich, refreshes my recollection. That name Newton Aldrich was written in my presence. I purchased one acre for $100.00 and that is the contract that was executed at the time. That was given to me as my receipt the night we bought it by Mr. Aldrich. It is dated March 5, 1927. (The instrument was admitted in evidence, marked Government's Exhibit 31, the original

(Testimony of John R. Gordon)

of which is before this Court by stipulation and order and designates Section No. 20 in Township 3 North, Range 3 East, and is signed Edith E. Skoog and John R. Gordon).

The document you show me dated March 7, 1927, attached to an envelope, is a receipt we received shortly afterwards from the office confirming our agreement. I received the deed through the mail. (The document and envelope were admitted in evidence, marked Government's Exhibit 32, the originals of which are before this Court by stipulation and order). Mr. Aldrich first came to my house to talk about this purchase on the night of the date that is on that slip. There were present Mr. Aldrich, Miss Skoog and myself.

A. Mr. Aldrich came into our home and said that he had something good to offer the past clients of the J. W. Alford Company in the way of oil lands, and we at first told him that we were not interested because we had already bought some oil leases from them and did not feel that we wanted to invest any more money with them. He said, "Well, this is an entirely different proposition; this is where you own the land, and it is entirely better than having a lease. Here you are buying land, and if the oil does not come in, why, you still have something of value for your money." And he talked to us for quite a while along those lines, and finally I told Miss Skoog that if she wanted to buy an acre that I would go in with her, and we would buy it. So we decided that we would, and gave the gentleman the check for the down payment at that time.

At that time Mr. Aldrich said that Mr. Alford owned the land and could give us a deed when we had it paid

(Testimony of John R. Gordon)

for. That is one of the arguments why we bought it, that we would be able to have something for our money instead of just an ordinary lease. Mr. Aldrich said that Mr. Alford was going to drill oil wells on it. I do not recall whether anything else was said as to the amount of money that was going to be spent in the development of this land. We never paid the contract up. We only paid $60.00 on it.

I received through the mail the letter you show me dated January 19, 1928.

THE COURT: There is something written on the back of it.

MR. ARMSTRONG: Yes: I am not offering that, your Honor. The letter just identified by the witness is offered in evidence.

MR. FRIEDMAN: We object, your Honor, as incompetent, irrelevant and immaterial; that the proper foundation has not been laid in this, that there has been no proof that the letter was ever deposited or caused to be deposited in the mails by the defendant J. W. Alford. And this is one of the letters which originally—in order to call the Court's attention to the specific testimony, this is one of the letters which was originally testified to and marked for identification on the direct examination, as I recall it, of the witness Miss Weber.

MR. ARMSTRONG: I think not.

MR. FRIEDMAN: What number is it, for identification?

MR. ARMSTRONG: It has never been offered before, Mr. Friedman.

(Testimony of John R. Gordon)

MR. FRIEDMAN: This one has never been offered before?

MR. ARMSTRONG: No.

MR. FRIEDMAN: Then I will object on the grounds I have stated, that there is no proof, no foundation laid that this letter was ever written by or caused to be written by the defendant or deposited in the United States Post Office by the defendant or under his direction.

MR. ARMSTRONG: Well, is there any question as to the signature?

MR. FRIEDMAN: Well, that is not the question now. You have offered the letter, and I am making the objection.

MR. ARMSTRONG: Very well.

THE COURT: Well, you will have to show and read the signature.

MR. ARMSTRONG: I will state to the Court that during the day I will identify the signature of the defendant.

THE COURT: It may be marked for identification. Let me see the letter, please.

(Government's Exhibit No. 33 for Identification).

A little later than the date of this letter Mr. Alford called me up about it. That was within two or three weeks of the date of the letter. I had never talked to Mr. Alford on the phone before but I had talked with him personally. The telephone conversation was relative to the contents of this letter. The person who called me up said, "This is Mr. Alford", and from my previous conversation with him and from the conversation itself,

(Testimony of John R. Gordon)

I am positive that I was talking to defendant J. W. Alford.

Exception No. 9

Q. Positive. Now, will you state that conversation?

MR. FRIEDMAN: To which, at this time, we interpose an objection it is incompetent, irrelevant and immaterial, and evidently a conversation occurring two or three weeks after the writing of the letter which counsel has offered for identification, which is the letter set forth, as I understand it, in the sixth count of the indictment.

THE COURT: Overruled.

MR. ARMSTRONG: Will you a swer the question, Mr. Gordon,

THE WITNESS: Will you please read the question.

MR FRIEDMAN: Exception.

(Question read by the reporter)

A. The telephone rang, and I answered the telephone and Mr. Alford said, "This is Mr. Alford talking." And he asked me to come down to the office relative to the stock certificates.

The reason we did not pay up on the contracts is that:

A. We had bought the acre of land and made our first payment and one or two others, I don't remember just which, and we have had continual telephone calls from the J. W. Alford Company asking us to come down to the office, and I think we even got letters to that effect, that they had something very important to tell us about our acreage that we bought. Owing to the fact that I was not home much, I did not get those calls. So finally, we got a call from them and promised to go down there one evening. And when we went down we

(Testimony of John R. Gordon)

went to Mr. Alford's office and when we went in, their regular office force was in their room, and they saw us come in and they scattered, and finally one of them came our and said, "We would like for Mr. Alford to deal with you." And we went into Mr. Alford's office and sat down and began to talk with Mr. Alford. He says, "Well, I want to talk to you about this land you bought." I says, "What is the matter? Isn't the well any good?" He says, "No, it isnt' any good, and we are not going to go through with that proposition." And during the conversation he says, "Now, you can have your choice; you can either have your acres of land or go into this other proposition I have here to offer you." And we felt a little indisposed to make any trading because we had been sold on the idea that we were going to receive land for our money which was of some value, instead of just a paper or a lease or something in which we had nothing to show for our money. But finally he persuaded us to sign some kind of a paper, not to make any more payments on this land and what we had paid was to be credited to this other proposition that he had. That is the reason we didn't make any more payments, on that account.

Q. At that time he told you that he would be able to deliver you the land?

A. He says, "You can have the acre of land or this other, but why be away out by yourself with one acre of land, with nothing to do. You will be away out there in the open with an acre all by yourself, and it will be of no value."

Q. Do you recall when that conversation took place.

A. That was the second payment we made. We made the payment in March. That would be pretty close to the 1st of June, I think. Maybe I have it in my file papers of that. But I think it was pretty close to the 1st of June.

(Testimony of Edith E. Skoog)

Q. At that time he didn't tell you the reason he wanted you to transfer out of this deal about the land was that he wasn't able to deliver it to you?

A. No. He gave the reason that the oil well he had drilling within a half a mile of there wasnt' any good, and we werent' going on with the proposition, then "Why keep your acre out there all alone?"

The group of checks you show me are all signed by me on my checks. The first check I gave to the salesman at the house. The first one or so I took to the office to pay and the rest of them were mailed to them. (The checks were marked Government's Exhibits 34 for identification). In all, I paid $100. to the J. W. Alford & Company.

Cross Examination

(By Mr. Friedman)

In the conversation I had with Mr. Aldrich he stated that Mr. Alford was drilling three wells on the land and that our lot was within half a mile of one of those wells. I am positive Mr. Aldrich said that Mr. Alford was drilling; that is the best of my recollection.

TESTIMONY OF EDITH E. SKOOG FOR THE UNITED STATES

EDITH E. SKOOG,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

During the year 1927 I was living in Los Angeles and with the witness, Mr. Gordon, made a purchase of land in Cimarron County, Oklahoma. That is my signature that appears on Government's Exhibit 31. I received the letter you show me dated April 1, 1927, through the mails on or about the date it bears. (Witness was shown Government's Exhibit 36 for identification). The letter

(Testimony of G. R. McNeill)

you now show me on the letterhead of J. W. Alford & Company, dated January 12, 1928, together with the envelope, I received on or about the date the letter bears. (The letter and envelope just identified by the witness was marked Government's Exhibit 35 for identification). The letter you now show me dated May 24, 1927, I received through the mails on or about the date the letter bears. (The last letter was marked Government's Exhibit 36 for identification).

(No Cross Examination)

TESTIMONY OF G. R. McNEILL FOR THE UNITED STATES

G. R. McNEILL,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

During the year 1927 I was living in San Diego. During that year I purchased two acres of purported oil land in Cimarron County, Oklahoma, from J. W. Alford & Company. I talked to a Mr. Miller about it on the morning of March 4, 1927 at the office of the New York Indemnity Company in Los Angeles. Mr. Paul Doring was present. Mr. Miller then told me he had a very good thing over there and he was putting everything he had into this himself. He described the land and said they were going to put down some wells there, that J. W. Alford & Company were going to put down some wells and Mr. Miller said he was leaving within a day or two to go to Oklahoma to this land. Mr.

(Testimony of G. R. McNeill)

Miller said that Alford owned the land and would give me a deed in fee simple after I had made my final payment on the land. I do not recall anything else that was said. I didn't pay much attention to that because I wanted the land, because I think the Oklahoma oil land is a good thing. I received the original of the photostat you show me. (The photostat of the subscription agreement and confirmation only (third page not being included) were marked Government's Exhibit 37 in evidence, the originals of which are before this Court on stipulation and order). I paid in all $200.00 and never received a deed, I wrote for it but never received it.

I paid $80.00 when I signed the contract and for six months I made monthly payments. I drew the several checks you show me. The check for $80.00 I gave to Mr. Miller and the other checks I sent through the mails to J. W. Alford & Company, Los Angeles, and the two invoices in that group of checks came to me at my office or at my residence in San Diego through the mail. I sent them the checks. (The group of checks and the two invoices were marked Governments' Exhibit 38 for identification). I received the letter you show me, attached to an envelope, in the mail on or about July 11, 1927, the date the letter bears. (Letter marked Government's Exhibit 39 for identification). I received the letter dated July 22, 1927 through the mails. (Letter marked Government's Exhibit 40 for identification). I drew the check dated December 2, 1927, and mailed it to the office of J. W. Alford & Company. (Check included in Government's Exhibit 38 for identification). I never received a deed on my deal. My contract was paid in

(Testimony of Fred Gundelach)

full. I paid a little over $200.00 plus the interest charges that are on that last check.

Cross Examination

(By Mr. Friedman)

I wrote the letter you show me and mailed it to Mr. Alford at the address it bears. (Letter marked defendant's exhibit K for identification). The letter you show me dated November 16, 1927, I wrote. Letter marked Defendant's Exhibit L for identification).

TESTIMONY OF FRED GUNDELACH FOR THE UNITED STATES

FRED GUNDELACH,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

In 1927 I was living at 932 South Beacon in Los Angeles. I contracted for the purchase of some acreage in Cimarron County, Oklahoma. The paper you show me is the contract that I refer to and that is my signature thereon. I saw the man sign the name Newcomb thereon. I first discussed the matter of purchasing this land with Mr. Newcomb at my place of business on Vermont Avenue. I run a fruit stand there and he was one of my customers. I can't recall when he first started to talk to me about it. It was about a week or two before the date on that agreement. He talked to me from time to time, always at my place of business. Mr. Newcomb stated he was talking about that proposition owned by

(Testimony of Fred Gundelach)

Alford & Company and that the land was owned by Alford & Company and they were intending to go down and drill for oil and also there was agricultural land. I did not pay much attention to the company's proposition—just to accommodate him for one of my customers, you know, more than anything else. He said the company was going to drill in about thirty or sixty days. I couldn't recollect now. I do not remember if he said how much the company was going to spend drilling these wells, nor do I remember what he said I would receive if I paid up my contract. The documents you show me purporting to be a confirmation I received; I can't recollect much talking about a deed. (The contract and confirmation identified by the witness were offered in evidence, marked Government's Exhibit No. 41, the originals of which are before this Court by stipulation and order).

Q. Did you complete payments, Mr. Gundelach?

A. Yes, sir.

Q. Did you receive a deed?

A. Not on that land.

Of the three papers you hand me I recollect the first one but I can't tell about the other two. That is my signature. I can't recollect seeing J. W. Russell sign it. (The paper was marked Government's Exhibit 42 for identification).

Cross Examination

(By Mr. Armstrong)

I never received the deed for this particular land because I was not entitled to a deed. It was never paid for.

(Testimony of Newton L. Aldrich)

Redirect Examination

(By Mr. Armstrong)

While I paid $100.00 altogether, it was not paid particularly on that land. I paid J. W. Alford & Company $100.00 in all, according to the contract, and made the last payment sometime this year. I knew I was not entitled to a deed until the land was paid for.

Recross Examination

(By Mr. Friedman)

When I completed my payments this year I did receive from Mr. Alford, this year, just what he and I agreed I was to receive when my payments were completed.

Redirect Examination

(By Mr. Armstrong)

It was agreed between Mr. Alford and me that I be transferred into another proposition concerning some land up at Las Vegas, Nevada. While I never was right at the property in Nevada, I am in and out of Las Vegas all the time. Mr. Alford didn't tell me he couldn't give me a deed to the Oklahoma land but there was some talk about his not wanting to spend any money and that he didn't think there was any oil.

TESTIMONY OF NEWTON L. ALDRICH FOR THE UNITED STATES.

NEWTON L. ALDRICH,

produced as a witness on behalf of the United tSates, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

During the year 1927 I was living in Los Angeles and was employed by Mr. Jackson for the J. W. Alford Company about the first two or three days of February. I was furnished with sales literature. I was furnished

(Testimony of Newton L. Aldrich)

with a copy of Government's Exhibit 25 and believe I can say this was my entire sales talk. That is what I did all my sales with—this particular paper. I called my customer's attention to the ad on page 4. As to the sections I sold I can remember a section 20. I had one or two other sections I can scarcely remember. I think twenty and twenty-three. The check you show me is my check and contains the number of the sections and the persons to whom I made sales. It shows section 20. I sold around twenty-four or five people. I think I sold thirty-two or three acres somewhere along there for which I had credit and got commission on. The people I sold to are as follows: V. C. Harrison, and Merlin Culver. On February 10, 1927, I sold to Mrs. Elizabeth Meredity in section 20—one acre. On February 12th, in section 20, to *Mr.* Kate L. Goulding.

Lula L. Whitledge, section 20, February 14th. February 17th, Mrs. L. M. Coventry,—Hettie Hawlett purchased an acre in section 20. February 21st, Mrs. L. M. Coventry again, one acre in section 20. February 20th, Dr. G. W. Closson, section 20, one acre. On March 1, 1927, Mrs. Hettie Hawlett, one acre in section 20. On March 4, 1927, J. F. Haley, one acre in section 20. On March 5, Lula L. Whitledge took another acre in section 20. On March 5, 1927, Edith E. Skoot and John R. Gordon took an acre together in section 20. On March 7, 1927, Mrs. Kate L. Goulding took another acre in section 20. On March 9th, Mary Phelan took an acre in section 20. On March 9th, I sold myself two acres on two separate contracts in section 20. March 19th, Mrs. Bertha Benker, one acre in section 20. And March 21st

(Testimony of Newton L. Aldrich)

is V. C. Harison, one acre in section 20. The same date, M. Culver, one acre in section 20. On March 28th Leroy Reynolds, one acre in section 20. On March 31st, S. McDaniels, one acre in section 20. April 8th, V. C. Harison, a second acre in section 23, and April 8th, J. F. Raley another acre in section 23. April 11th, Lizzie George,—this is eight acres. I called on this lady and talked to her, and she said she knew Mr. Alford and thought a great deal and she would go down and talk to him and get his opinion. So when I appeared at the office the next morning they told me the sale had been made on these eight acres in section 28. I copied the order down on my stubs and then tore the blanks out, if I remember correctly, and then throwed them away. That is all in this book.

This other book you show me shows the last acre I sold and it was to David Ritchie on April 23rd, one acre in section 20. I think the day after I sold Ritchie, perhaps, I came down to the office that morning and they said the stuff was off that they were not going on with the sale. I must have been in the office a few days previous although I was very slack in attending sales meetings. I think Mr. Jackson gave me the papers instructing me to sell in section 20. As to the specimen of grant deeds you show me I have either seen it or one like it and I think I gave one like it to Dr. Means, the Post Office Inspector. The first time I saw either that specimen deed or one like it was just shortly before I quit. It was given me in the office but I couldn't say by whom. The literature seemed to be broadcast about the office there and I

(Testimony of Newton L. Aldrich)

couldnt' say it was given to me. I may have picked it up myself.

(Specimen deed marked Government's Exhibit 43 for identification.)

Cross Examination

(By Mr. Friedman)

I did say I personally purchased two acres for myself. They were bought in my own name. I transferred one of the contracts therefor later and retained the other and paid it out. I know of my own knowledge that the money on the contract I transferred was refunded to the man who took over that contract.

Q. BY MR. FRIEDMAN: Mr. Aldrich, you sold to Mr. Gordon and Miss Skogg?

A. Yes.

Q. Did you state to Mr. Gordon or Miss Skoog when you sold to them that Mr. Alford or his company had already started to drill wells upon this land?

A. I can't recall the conversations, being so far back, but I can just say that I am sure I didn't say such a thing, because it hadn't happened then. We were told at that time that wells were to be drilled, and I am sure that must have been my talk, although I can't recall nor wouldn't state positively that conversation.

Q. You have no recollection of what you said at that time?

A. I have not, really.

Q. But the information given to you by Mr. Alford or some one else was to the effect that no wells had been started as yet, when you went to sell this land?

A. I can remember our talk was that, "We are going to drill three wells," and I would point to them with my

(Testimony of Paul Doring)

finger on the map, where approximately we were going to put the wells.

Re-Direct Examination

(By Mr. Armstrong)

I pointed out on the map approximately where we understood the wells were going to be drilled. I couldn't say who told me the position where these wells were going to be drilled unless it would be the general talk around the office. I can't recall or testify to scarcely a thing about these transactions as it has been about two and one-half years ago and has been entirely out of my mind for the last year and a half. I heard the talk about where the wells were to be drilled somewhere. I know the money was paid back on the contract I transferred because I carried the money back myself and it was paid to Mary Phelan. On account of the commission I had been paid on the deal, I had to make the sacrifice of my commission on the deal in order to get the money to take back to her.

TESTIMONY OF PAUL DORING FOR THE UNITED STATES.

PAUL DORING,

produced as a witness on behalf of the United States being first duly sworn testified in substance as follows:

Direct Examination

(By Mr. Armstrong)

During 1927 I was living in Alhambra and during that year I purchased land in Cimarron County through Mr. Miller. I think it was sometime in the early part of February, 1927; I signed a subscription contract for that

(Testimony of Paul Doring)

purpose and subsequently received a confirmation. I presume the subscription contract was similar to Government's Exhibit 31 but I wouldn't like to testify absolutely to it. Mr. Miller also signed it. I don't remember receiving anything like Government's Exhibit 32 at all. I don't believe I made my second payment at all because there were rumors some how or other that something had gone astray so I held off making no further payments. I made my first payment to Mr. Miller and the check was payable to Alford & Company. When Mr. Miller sold me this subscription it was in my office and there was nobody in the immediate vicinity of my desk. Mr. Miller had been in the office quite a good deal that morning and had sold subscriptions to several of the boys in the office and came to me and described it to me in general. One of the facts or points that he made out was to the effect that the Alford Company had purchased the land and that they were going to drill there within the next thirty days or start drilling operations within thirty days. He said he was leaving the following week to go with somebody to superintend or see to it that the rig was going up. That he was leaving with his family the next week. I do not recall whether he said anything about what I would receive in exchange for my money. *I* was just a purchase of land in which we were to get an oil royalty and the land was ours.

Exception No. 10

Q. Did he say what evidence of title you would get to it?

A. Yes. That was one of the points I tried to bring out very strongly. I questioned the title, and he (Miller)

(Testimony of Paul Doring)

said at that time they already had an abstract of title, and the title was already brought down to J. W. Alford & Company; and he even offered to show it to me, but I took his word for it.

Q. Did he say what you would receive in exchange as evidence of your title?

A. We would get a deed just as soon as our payments were completed.

Q. You don't recall what section it was in?

A. No.

Mr. Armstrong: That is all.

CROSS EXAMINATION

(By Mr. Friedman:)

Q. Prior to your purchasing this property did you ever have any conversations with Mr. J. St. Paul White relative to it?

A. No.

Mr. Friedman: I think that is all.

Mr. Armstrong: That is all.

Mr. Friedman: At this time I move the Court to strike out that portion of the witness' testimony relative to any statements made by Miller, relative to the having of an abstract of title to the land and that they had bought all the land, on the ground no foundation has been laid for the same, in that it has not been shown that Mr. Miller had ever received any such instructions or had ever been told by Mr. Alford or anyone under Mr. Alford's direction to make such statements.

THE COURT: Objection overruled.

Mr. Friedman: An exception.

(Testimony of Theodore L. Mueller)

TESTIMONY OF THEODORE L. MUELLER FOR THE UNITED STATES.

THEODORE L. MUELLER,

produced as a witness on behalf of the United States, having been duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong:)

During 1927 I was living in Wilmington. About the middle of March, 1927, I purchased six acres of land in Cimarron County, Oklahoma. That is my signature on the subscription contract you show me and that is Mr. C. L. Brubaker's signature in the lower right hand corner. He was the man from whom I made the purchase. I received that confirmation you show me about the date it bears by mail.

(The subscription contract and confirmation were admitted in evidence marked Government's Exhibit 44, the originals of which are before this Court by stipulation and order.)

I talked to Mr. Brubaker about this proposition the day I signed and no one else was present.

Mr. Brubaker made several representations relating to this property. The first and foremost that I recall to my mind is that J. W. Alford & Company owned this land; that this was potential oil land with great agricultural and homesite possibilities, and that they were spending $300,000 in the development of this particular section. This section was recorded—on file in the County's Recorder's Office at Boise City, Cimarron County, Oklahoma; that Alford & Company were going to develop a town site

(Testimony of Theodore L. Mueller)

in this particular location, and that our particular property was within a mile of that town site, and that the town site was—well, within a mile of the main highway that was going through there, or some talk similar to that. That this particular property was also located within about three miles of the Ramsey Well and about six miles west of Boise City.

Q. Do you recall anything else?

A. Yes; that Alford & Company were going to drill a well—I don't know whether it was being drilled or was to be drilled. I couldn't say as to that. I don't recall exactly. But if this particular well did not come in, they were going to drill a second, and if that didn't produce, why, a third would be drilled; and that the valuation of this property would be greatly enhanced in case oil should not come in from the location of the town site at that particular point. In other words, that my property would be worth at least what I paid for it, in spite of the fact that no oil would be produced.

As to Government's Exhibit No. 20 I have seen a copy similar to that map if that isn't the one I saw itself. I can't definitely state whether the map I saw had that red arrow and the words "Panhandle Petroleum Acres" on it. I do recall seeing the words "Mercury Oil Company" on the map. I don't recall that he definitely stated anything about the Mercury Oil Company but I knew there was some talk relative to the Ramsey Oil well right adjacent to the Mercury Oil well. In fact there was also a copy of a paper from Boise City which had an article in it relative to this Ramsey well being drilled at that time. I completed my payments on July 26, 1927, and have never

(Testimony of Mrs. Ella Gardner)

received a deed. The group of checks you show me were drawn and signed by me and I sent them to the payee thereon.

(The checks were marked Government's Exhibit No. 45 for identification.)

Cross Examination

(By Mr. Friedman:)

Mr. Brubaker told me that upon completion of the payments I would receive a grant deed. So far as I recall that was all that was said relative to the title. He also told me that as far as there being or not being any oil in that vicinity that it was a pure gamble. Mr. Brubaker did not tell me from whom Mr. Alford had acquired this land nor did he mention the name of J. St. Paul White.

TESTIMONY OF MRS. ELLA GARDNER FOR THE UNITED STATES

MRS. ELLA GARDNER,

produced as a witness on behalf of the United States, having been duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong:)

In the early part of 1927 I was living at 1036 South Norton in Los Angeles. During that time I contracted to purchase some land in Cimarron County, Oklahoma. W. E. Gale first talked to me about it. I bought one acre, I think in section 29. At the time I didn't have enough to make the forty dollar payment and borrowed it of Mr. Gale. I paid that the last of July and then paid ten dollars a month for the rest of the time. I made the pay-

(Testimony of Mrs. Ella Gardner)

ments to J. W. Alford & Company. I completed my payments.

Q. What did Mr. Gale tell you about this land?

A. He showed me quite a number of maps, showing me the flow of oil down in Texas, and all matter pertaining to the oil company. And I told him those maps could be easily made; and if I bought the land I would get a deed to it absolutely.

Q. Mr. Gale told you that?

A. Yes. And if I didn't find any oil, I could live on it, if I wanted to, or I could rent it with the others. I said, "That might sound more like it, that I might buy oil land, but I didn't believe in oil, as far as buying oil was concerned." He said that they were drilling a well at that time and that I would know soon whether I had any oil or not; that I wouldn't have long to wait to know about it.

Q. Do you recall where he said the well was being drilled?

A. It was within a quarter of a mile—supposed to be—of where I bought my land.

Q. Within a quarter of a mile of your land?

A. Yes, sir.

Q. Do you recall about what the date was that you first signed up to take this land?

A. It was between the 1st and 9th of April.

Q. Between the 1st and 9th of April, 1927?

A. Yes.

Q. I understand that you paid up your contract?

A. Yes, sir.

Q. Did you ever receive a deed?

(Testimony of Mrs. Ella Gardner)

A. No, sir.

I signed a contract similar to Government's Exhibit 44 and received a confirmation similar to that. I made my last payment on the first of October, 1927.

Cross Examination

(By Mr. Friedman)

I never received the deed to this land but I received my money back from Mr. Alford.

Re-direct Examination

(By Mr. Armstrong)

I received my money back in March, 1928, about three weeks after the real estate trial. I was present at the real estate hearing and recall Deputy Commissioner Richardson being there at the time. This was the first of March, 1928. Mr. Richardson asked why my money hadn't been paid back but they said they didn't know where I was but I had been living at the same place all the time. Mr. Alford said the money hadn't been paid back because they couldn't find me.

Re-cross Examination

(By Mr. Friedman)

I was not out of Los Angeles in 1928 nor in the latter part of 1927. I left Los Angeles about May 1st and returned June 12th. I never received any letter from Mr. Alford relative to my calling and getting the money back. I received a letter while I was in Iowa asking me to come into the office that they had something particular to tell me. I go there about the 9th of May and it was a week or two afterwards that they wrote and said they had something very important to tell me. I could not return at that time and I didn't answer the let-

(Testimony of Cameron F. Bradley)

ter. When I returned the 12th of June there was another letter there stating the same thing. I was out of California at that time just six weeks from the first of May to the 12th of June. On my return from Iowa I did not see Mr. Alford but I saw Mr. Henderson, his representative.

Re-direct Examination

(By Mr. Armstrong)

Mr. Henderson was in the office of J. W. Alford & Company when I went there. The letter I received while in Iowa was on the same line as Government's Exhibit 5 for identification.

The Court here instructed the jury that the only purpose that they could consider the statements made by Mr. Richardson for was to show that the money had not then been refunded because the Alford people could not get in touch with the witness.

TESTIMONY OF CAMERON F. BRADLEY FOR THE UNITED STATES.

CAMERON F. BRADLEY,

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

During the year 1927 I was employed by Mr. Alford for the J. W. Alford & Company. The offices of Mr. Alford at that time were in suite 400 Lincoln Building, 742 South Hill Street, Los Angeles. I was employed by Mr. Alford as auditor. In the latter part of January or first part of February, 1927, I had a talk with Mr.

(Testimony of Cameron F. Bradley)

Alford in his office relative to the land in Cimarron County, Oklahoma. No one else was present. At that time Mr. Alford told me that he bought a little in excess of thirty thousand acres in Cimarron County, Oklahoma, and was going to start a campaign and put possibly one hundred salesmen to work selling the land. I asked him what he used for money and he said he would give me the details of that later. I had some knowledge of Mr. Alford's financial condition at that time and that is what prompted me to ask him what he used for money. He told me at that time he paid fifteen dollars an acre for it. At the time he first told me about the purchase of the land to set it up in the books at fifteen dollars an acre for the entire acreage as real estate and set up a corresponding liability—as I remember it now—"Due for real estate as an offsetting credit." In the latter part of February, 1927, he told me that he merely had an option on the acreage and that option required a payment within thirty days from the date he told me of some $25,200. Mr. Alford employed a number of salesmen and employed a Mr. Jackson as his right hand man, to use his expression, and Mr. Jackson and Mr. Russell later and Mr. Alford prepared considerable sales information for the salesmen in the way of sellergrams and various other instruments and copy for advertising in various newspapers. I attended some sales meetings during the time I was there and during the latter part of the sales campaign Mr. Alford addressed some of these meetings and took active charge of the sales organization. These meetings were along the middle or latter part of April

(Testimony of Cameron F. Bradley)

as I recall it now. Before he took charge of these sales meetings he attended some of them.

The salesmen were to be paid a commission of twenty-five percent out of the first payment. In addition to that two and one-half percent special override was to be paid to Mr. Jackson and two and one-half percent to Mr. Russell and before Mr. Russell came there there was some sort of an override that was to go to Mr. Broadhead. There was a total commission of thirty percent all told.

Q. Now, at these various sales meetings that you attended, do you recall whether or not Mr. Alford, or at any other time, represented to the sales people the interest that he had in this land?

A. The only thing I recall in that particular, Mr. Armstrong, is that at one sales meeting one of the salesmen had an opportunity—

Q. Now, do you recall about when that meeting was?

A. That, as I recall it now, was about the first—along the first part of April.

Q. 1927?

A. Yes; that is my best recollection.

Q. Now, one of the salesmen—

A. One of the salesmen had an opportunity to sell a large number of acres. The party who desired to buy this large number of acres wanted a checkerboard over the entire 30,000 acres and Mr. Alford told the sales meeting, that meeting, something in regard to the transaction, that it was impossible to carry that out, as they were only selling what they owned, and that some of

(Testimony of Cameron F. Bradley)

those acres—some of those sections he desired a checkerboard in he did not at that time own.

I have seen several of Government's Exhibit 15 around the office. They were prepared by Mr. Jackson and Mr. Alford. Mr. Alford had supervision of all literature and data that was finally given out and passed on all advertising copy.

Exception No. 11

Q. Now, coming back to the question of development of drilling of the land, do you recall ever having heard Mr. Alford discuss that particular question?

A. Yes. I heard him mention it to different salesmen at different times. I don't recall I ever heard him say anything before a sales meeting in connection with that.

Q. But to salesmen individually?

A. Yes. There might have been possibly two or three or four salesmen together at the same time, or something of that sort.

Q. Did you hear him say that once or more than once?

A. More than once.

Q. What did he say about that?

MR. FRIEDMAN: We will object to that on the ground the proper foundation has not been laid.

THE COURT: Yes. Locate the time and place and who was present.

Q. BY MR. ARMSTRONG: Can you fix the approximate time of these particular conversations and the persons who were present?

A. I cannot fix the persons present. I would say an approximate time would be along about the first part of February, 1927.

(Testimony of Cameron F. Bradley)

Q. You don't remember who the salesmen were that you talked to?

A. No, sir; I cannnot.

Q. Will you answer the question, please?

MR. FRIEDMAN: The same objection, if the Court please. There is no way in the world the defense can meet these statements unless we are told to whom they were made.

Q. BY THE COURT: Do you remember where they were made?

A. Yes, sir; they were made—if I may answer that question—

Q. A little louder, so counsel can hear you.

A. Yes. They were made at the office of J. W. Alford & Company in the Lincoln Building in this city.

Q. To the best of your recollection, to whom were they made?

A. I can't say, sir, other than they were made to different salesmen in groups of possibly three or four.

THE COURT: I will overrule the objection.

MR. FRIEDMAN: An exception.

Q. BY MR. ARMSTRONG: Will you answer the question?

A. As I recall now, he said that he was getting ready to drill on some of the acreage in Oklahoma, and that he had sent Mr. J. O. Carter up to the acreage to get ready to move on the rig and other necessary materials.

Q. Do you recall whether or not during these conversations he said how soon it would be before he could drill it?

A. Right away. He said he had sent Mr. Carter up there to get the equipment to move it onto the location.

(Testimony of Cameron F. Bradley)

I was familiar with the books and records of Mr. Alford during that time and made most of the entries in those books myself. On some of the subsidiary records the entries were made by Miss Dorothy Weber. By subsidiary records I mean accounts receivable and accounts payable and that sort of thing. I was familiar with the moneys that came in from the sale of these acreages and that were disbursed on account thereof. During the entire period no money was paid to an account of J. St. Paul White, trustee. The money that came in from the sale of this acreage was used to pay salesmen's commissions, special override commissions, expenses incidental to the operation of the business and a portion of it was used by Mr. Alford personally and a portion of it was used to pay off some obligations of Mr. Alford that had been incurred prior to the forming of this deal. None of the money was ever paid to purchase any of this acerage. Sometime in June as nearly as I can remember Mr. Alford told me he was going to Ft. Worth, Texas. Sometime prior to that in the latter part of April or the first part of May, 1927, in his private office with no one present but Mr. Alford and myself, Mr. Alford told me that the deal was off; he wasn't going through with it and he asked me if the people who had already paid in their money should continue to pay their installments and pay out their contracts if he could deliver the acerage and he told me that he could not but that he was going to transfer them into a deal that they would fall for right away. At this conversation Mr. Alford accepted time payments for the portion of acerage in Cimarron County.

(Testimony of Cameron F. Bradley)

I went to Ft. Worth the first part of July, 1927, after Mr. Alford had gone. I had a conversation with him here at that time, no one else was present, in which I asked Mr. Alford what would be done as far as those who had not transferred from the Panhandle Petroleum Acres deal into his new deal and he stated he had left Mr. Henderson in charge of the Los Angeles to take care of any squawks, to use his expression, and he asked me at that time during that same conversation if I would prepare an entry on the books of his new deal to show that all moneys received on the old deal had been expended in connection with the organization of the new deal itself. I told him I most certainly would not. I knew that the money had not been spent for that purpose. During that conversation Mr. Alford said he would take the responsibility for making that entry if I would make it. That he didn't know how; he said that it would be all right, that he had connections in Ft. Worth and would take care of the Postal authorities if he got into a jam, or words to that effect.

Q. I show you a letter dated April 1, 1927, Government's Exhibit 6 for Identification, and I will call your attention to the signature and ask you if you know whose signature that is?

A. I do.

Q. Whose signature is it?

A. J. W. Alford's.

MR. ARMSTRONG: The letter just identified by the witness is offered in evidence as Government's Exhibit.

MR. FRIEDMAN: At this time we object to the introduction of this letter in evidence on all the grounds

(Testimony of Cameron F. Bradley)

that were urged at the time it was first offered: that on its face it is apparent the letter relates to matters and things entirely apart from anything connected with the alleged scheme set forth in the indictment.

MR. ARMSTRONG: No; I think not. It refers not only to a former situation, but also to the situation we have before us now; particularly the latter part of it.

THE COURT: Let me see it. I will sustain the objection, at this time, at least.

I cannot say I have seen the ad on page 4 of Government's Exhibit 25 before but I have seen a copy of the same thing in the office of J. W. Alford & Company in Los Angeles. Those are my signatures which appear upon two confirmation receipts which you show me. That form of receipt was drawn up and approved by Mr. Alford and he instructed me to sign on that paper confirmation for all sales that were made. (Confirmation receipt identified by witness marked Government's Exhibit 46 for Identification.)

The group of checks you hand me consisting of twelve in number were indorsed as follows: The check of February 8, 1927, with a rubber stamp initialed by myself. I had authority to use that stamp and indorse checks for the J. W. Alford Company. That is the stamp Mr. Alford had prior to the time I went with him and they instructed me to indorse the checks to this account in that manner. These twelve checks are all signed by Bessie McCluggage. The check dated March 7, 1927, the same circumstances. Check April 6, 1927, is indorsed J. W. Alford & Company and Cameron Bradley, Trustee, is in my hand writing. Check May 8, 1927, indorsed

(Testimony of Cameron F. Bradley)

J. W. Alford & Company, Cameron Bradley, Trustee, is in my handwriting. Check dated June 10, 1927, is indorsed J. W. Alford & Company, J. W. Alford, in Mr. Alford's handwriting and "Cameron Bradley, Trustee" in my handwriting underneath. Check dated July 9, 1927, is indorsed with a rubber stamp, "For deposit only, pay to the order of Fort Worth National Bank, Fort Worth, Texas, No. 122, J. W. Alford, Trustee." I ordered that stamp in Fort Worth, Texas, on the instruction of Mr. Alford and it was used in the office at the time I was there to indorse all checks that were deposited in that account. On check July 23, 1927, certified check, appears the same rubber stamp. Check February 28, 1927, indorsed with rubber stamp and initialed by myself. Check March 22, 1927, the same. Check April 21, 1927, the indorsement is in my handwriting. Check May 24, 1927, the same. Check June 24, 1927, is indorsed in Mr. Alford's handwriting.

(The checks identified by the witness were marked Government's Exhibit 47 for Identification.)

I had a conversation with Mr. Alford in connection with this trustee matter which took place in his private office at the time the account was open in the early part of 1927. Mr. Alford said he wanted to open an account in the name of Cameron Bradley, Trustee, with the possibility of avoiding attachment from a judgment that had been rendered in connection with a suit then pending in the Superior Court. The money that went into this trustee account was used subject to Mr. Alford directions. The account was opened to deposit all the moneys that came in in connection with the Panhandle Petroleum

(Testimony of Cameron F. Bradley)

Acres deal and the moneys were expended at his direction. A portion of it was expended as I have heretofore stated in the payment of commissions and a portion of it used by defendant for his own account and for previous obligations. The letter you show me which is Government's Exhibit 33 for Identification bears the signature of J. W. Alford. I was not with Mr. Alford at the time it bears date, January 19, 1928.

MR. ARMSTRONG: This letter just identified by the witness is offered in evidence.

MR. FRIEDMAN: May I see it?

MR. ARMSTRONG: Yes. (Handing document to counsel.)

MR. FRIEDMAN: Well, I will object to the introduction in evidence of the letter just offered by the Government, which is now marked No. 33 for identification, on the grounds that the proper foundation has not been laid, and it has not been shown that that letter was ever deposited in the mails or in the United States post office by the defendant, or by any one under his supervision or control, or by his direction, and I will call the court's attention to the fact that it is expressly held in the case of Freeman vs. United States, reported in 20 Fed. Rep. 2nd, the mere fact that the signature is identified as that of any given person does not even raise an inference that that person mailed or caused that letter to be mailed.

MR. ARMSTRONG: This is not a count letter, if your Honor please.

THE COURT: What?

MR. ARMSTRONG: This is not a count letter.

THE COURT: Yes.

(Testimony of Cameron F. Bradley)

MR. ARMSTRONG: And in the second place, the witness Gordon testified that he received this letter through the mails in this envelope. Now, we have a witness who is familiar with the defendant's signature and he says that is the defendant's signature.

THE COURT: Overruled.

MR. FRIEDMAN: Exception.

THE COURT: That was the witness Gordon that was examined?

MR. ARMSTRONG: Yes, your Honor.

THE CLERK: Government's exhibit 33 for identification admitted in evidence.

(Government's Exhibit No. 33 in evidence?)

MR. ARMSTRONG: On the letterhead of J. W. Alford & Company, January 19, 1928, "Mr. John R. Gordon, 1129 South Mariposa, Los Angeles, California. Dear Mr. Gordon:—"

MR. FRIEDMAN: May I interrupt you? I don't mean to be discourteous, but you informed the court that was not one of the letters set forth in the indictment. I think you are in error.

MR. ARMSTRONG: If I am, it is inadvertence. I will make this statement to the court at this time, I was not under the impression that that was the sixth count, but nevertheless I still think the offer is good, and that a sufficient foundation has been laid.

THE COURT: What count is that?

MR. FRIEDMAN: The sixth count of the indictment. That is the identical letter of which the mailing is complained of.

(Testimony of Cameron F. Bradley)

THE COURT: Yes, the substance of it is stated there. It is not copied in full.

MR. FRIEDMAN: A full copy is contained in the bill of particulars.

MR. ARMSTRONG: Yes. I made a mistake, your Honor. This is the letter which is charged in the sixth count of the indictment.

MR. FRIEDMAN: Yes, I know that you made that statement inadvertently. There is no question about that. Now, that being so, if I may speak on the question after your Honor's ruling—

THE COURT: Yes, I have no objection; you may.

MR. FRIEDMAN: I desire to renew my objection now as to the admission of this in evidence and ask the court to reverse its prior order, on the ground that it is incumbent on the Government, so far as this particular letter is concerned, to prove that it was deposited in the United States post office by the defendant, or under his direction.

THE COURT: Yes, I think he should recall whoever wrote the letter, or dictated it, or caused it to be dictated—

MR. FRIEDMAN: That letter is—

THE COURT: —unless it was one that was testified to by the stenographer.

MR. FRIEDMAN: It was testified to—

MR. ARMSTRONG: No. I will say to your Honor that this is one of the letters that was testified to either by the witness Green or the witness Weber. It is a letter which bears date of January 19, 1928, and was not testified to by either of those witnesses.

THE COURT: What is the number of the exhibit?

(Testimony of Cameron F. Bradley)

MR. ARMSTRONG: Exhibit number—the exhibit number is 33 for identification, and it is my impression as to the ruling in the case of Rasmussen vs. U. S., which is a Ninth Circuit case, found in 8 Fed. (2nd) 948, that the foundation is sufficient; it is a question for the jury as to whether it was authorized by the defendant, considering that his signature is attached to it and the envelope is here; the post mark is on the envelope, and the witness Gordon testified that he received it through the mails. The stamp and post mark—

THE COURT: We will follow the same method you have followed in making your proof as to the others, and the objection will be sustained for the present.

THE CLERK: Not admitted in evidence?

THE COURT: No. It may be that it will be sufficiently identified later.

BY MR. ARMSTRONG:

Q. I will show you a letter dated January 12, 1928, together with an envelope, and ask you to examine that and state if you know whose signature that is.

A. I do.

Q. And whose signature is it?

A. J. W. Alford's.

MR. ARMSTRONG: The same situation exists with reference to this letter, your Honor.

THE COURT: The same ruling.

MR. ARMSTRONG: In view of your Honor's ruling, I will just mark it for identification.

THE CLERK: Mr. Armstrong, this is already for identification Government's Exhibit 35.

(Witness handed checks constituting Government's Exhibit 34 for Identification.)

(Testimony of Cameron F. Bradley)

These checks are indorsed in the following manner: The check of March 5, 1927, with the rubber stamp and initialed by myself. Check of April 4, 1927, the same. Check of May 5, 1927, the indorsement is in my handwriting. Check of May 28 is indorsed in Alford's handwriting except "Cameron Bradley" which is in my handwriting. The check of July 6, 1927, is indorsed with the rubber stamp I referred to previously. The check of August 10, 1927, is indorsed with the rubber stamp and is also indorsed in ink, "J. W. Alford", "J. W. Russell", and I should say that is Mr. Russell's signature.

(Government's Exhibit 34 for Identification admitted in evidence and marked Government's Exhibit 34, the originals of which said checks are before this court by stipulation and order.)

Exception No. 12.

Q. I show you a letter dated July 11, 1927, and call your attention to the signature appearing thereon, and ask you if you know whose signature that is.

A. I do.

Q. Whose signature is it?

A. J. W. Alford's.

MR. ARMSTRONG: I am referring now to Government's Exhibit 39 for identification. This is not a count letter, and it is offered for the same purpose I offered the former one.

MR. FRIEDMAN: I make the same objection. The proper foundation has not been laid.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit No. 39 in evidence.)

(Testimony of Cameron F. Bradley)

MR. ARMSTRONG: It is a letter on the letterhead of J. W. Alford & Company, dated July 11, 1927. This letter is a letter directed to G. R. McNeil and was made the subject of the third count of the indictment. The indictment alleged this letter was mailed from Los Angeles, but the post mark showed it was mailed from Fort Worth, so at this time I am going to ask that the third count be withdrawn. The letter will be offered merely as an admission or act or declaration on the part of the defendant, and not in support of that third count.

THE COURT: The third count?

MR. ARMSTRONG: Yes, the third count. The indictment alleges the letter was mailed from Los Angeles, when the post mark showed it was mailed from Fort Worth.

THE COURT: Yes, it does so allege.

MR. ARMSTRONG: This letter is offered merely as any other letter would be which is not a count letter.

MR. FRIEDMAN: Do I understand, then Mr. Armstrong, that the Government has requested that the third count be disposed of?

MR. ARMSTRONG: Yes; that it be withdrawn from the consideration of the jury.

Exception No. 13.

Q. I show you another letter dated July 22, 1927, and ask you to examine that and state if you know whose signature that is.

A. I do.

Q. Whose?

A. J. W. Alford's.

(Testimony of Cameron F. Bradley)

MR. ARMSTRONG: This is a letter addressed to G. R. McNeill.

MR. FRIEDMAN: Have you offered this, Mr. Armstrong?

MR. ARMSTRONG: I am going to offer it now for the same purpose the other letter was offered. It is Government's exhibit 40 for identification.

MR. FRIEDMAN: We will object on the same grounds, to-wit, it is incompetent, irrelevant and immaterial; the proper foundation has not been laid; and it is without the issues of the indictment or the bill of particulars at the present time.

THE COURT: The proper foundation has not been laid.

MR. FRIEDMAN: The proper foundation has not been laid and it has not been shown that the defendant mailed or caused that letter to be mailed or delivered.

THE COURT: This isn't one of the count letters?

Mr. ARMSTRONG: No, it is not.

MR. FRIEDMAN: But I added to it the word "delivered." In other words, there is nothing to show, as I understand it—I may reverse my proposition—the testimony only shows that the signature on that letter is the signature of Mr. Alford.

MR. ARMSTRONG: And that the witness McNeill received the letter through the mails.

MR. FRIEDMAN: But there is no proof to show that after Mr. Alford's signature appearing on there, or even before, that he authorized or directed any act which brought that letter to the attention of Mr. McNeill or brought it into his keeping. In other words, a person

(Testimony of Cameron F. Bradley)

may write two or three letters and sign them, and then change his mind and never have intention or desire of sending them, and somebody else may pick them up and think they should be mailed.

MR. ARMSTRONG: I think that is rather speculative, your Honor.

MR. FRIEDMAN: Not at all.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit No. 40 in evidence.)

(Witness handed checks constituting Government's Exhibit 38 for identification.)

The indorsement on these checks are as follows: The one on July 4, 1927, is signed J. W. Alford & Company and followed by the rubber stamp I referred to before. I couldn't identify who wrote "J. W. Alford & Company". The one dated *6 2 27* is indorsed in my handwriting. Check March 4, 1927, indorsed by rubber stamp and initialed by me. Check March 4, 1927, indorsed with rubber stamp and initialed by myself. Check of September 2, 1927, is indorsed J. W. Alford & Company, J. W. Alford in Mr. Alford's handwriting and a further indorsement which reads, H. H. Harris.

(Checks testified to by witness offered in evidence and marked Government's Exhibit 38.)

The witness thereafter was presented with certain papers and documents as to which he identified his signature thereon. These papers and documents were marked Government's Exhibits for identification Nos. 48 to 53 inclusive and 55 to 66 inclusive. None of these papers or documents were subsequently offered in evidence.

(Testimony of Cameron F. Bradley)

(Witness continuing.) The letter you hand me dated December 7, 1927, bears the signature of J. W. Alford at the bottom thereof.

(The letter was marked Government's Exhibit 54 for identification.)

The five checks you hand me drawn on the Commercial National Trust & Savings Bank purported to be signed by Dr. T. L. Mueller bear the following indorsements: Check dated April 15, 1927, is indorsed in my handwriting. Check dated May 12, 1927, also in my handwriting. Check of June 14, 1927, is indorsed in Mr. Alford's handwriting. Check of July 15, 1927, bears the Fort Worth National Bank rubber stamp indorsement. The check of July 26, 1927, also bears the rubber stamp indorsement of the Fort Worth National Bank but I do not know in whose handwriting the writing on the back is.

(The checks testified to by the witness theretofore marked Government's Exhibit 45 for identification were admitted in evidence and marked Government's Exhibit 45 in evidence.)

Cross-Examination

(By Mr. Friedman.)

I cannot state from memory what obligations owed by Mr. Alford were paid with the money that was collected while I acted as auditor. I cannot state any one of such obligations. I cannot state how much of this money was drawn personally by Mr. Alford. Those things are all a matter of record. They are in his books. During the time I was auditor I think Mr. Alford had a small balance of possibly three or four hundred dollars of his own money in the bank that he opened the account with. I do

(Testimony of Cameron F. Bradley)

not recall any time that Mr. Alford borrowed any money or put it into the business after the Panhandle Petroleum Acres deal was started. I do not recall, other than I have stated, any instances during the period from January to October, 1927, that Mr. Alford deposited in this account any money other than that received from the sale of the Oklahoma land but by that I mean other than the two, three or four hundred dollar balance that he had. I think Mr. Alford first went to Fort Worth, Texas, sometime in June, 1927, and I think I arrived in Fort Worth, Texas, about the first of July, 1927.

Exception No. 14.

Q. 1927. Where do you live, Mr. Bradley?

MR. ARMSTRONG: That is objected to as immaterial and not proper cross-examination.

THE COURT: I cannot see the materiality.

MR. FRIEDMAN: Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have the right to elicit that on cross-examination. I may say that this is the first witness the Government had called that they have not elicited the address from.

THE COURT: I will sustain the objection.

Q. BY MR. FRIEDMAN: What is your business, Mr. Bradley?

A. My profession is an accountant, public accountant.

Q. What is your occupation now?

A. I am not doing anything at the present time on account of this case.

Q. On account of this case?

A. Yes.

(Testimony of Cameron F. Bradley)

Q. Do you live in Los Angeles?

MR. ARMSTRONG: That is objected to as immaterial and invading the Court's ruling.

THE COURT: I have ruled on that question.

MR. FRIEDMAN: I will temporarily pass on to something else. I would like leave to submit authorities on my right to develop that on cross-examination. I haven't them with me.

THE COURT: All right.

With reference to the group of checks signed by Mr. McNeill I believe I stated that as to the one dated July 4, 1927, I could not state who wrote the first line, that is the first indorsement, but the second indorsement is the rubber stamp indorsement I referred to as being used for indorsement purposes with the Fort Worth National Bank. The first line *if* not my handwriting. The check in that batch dated 6 *22 27* is indorsed in my handwriting—all of it. To the best of my knowledge and belief that check was deposited in the bank. All of the checks that came into my custody were not deposited in the bank. Some of them were cashed at Mr. Alford's instruction. I believe the check dated June 2nd was deposited, I believe, with the Pacific-Southwest Trust & Savings Bank. I can't think of the name of the bank that I was depositing the funds of the J. W. Alford & Company with at that time but I know the location. I believe it was the Securities Trust & Savings Bank at Sixth and Spring Streets. I do not remember whether Mr. Alford was in Los Angeles on the 2nd of June, 1927. I believe he was. The indorsement on the checks signed by Mr. McNeill dated May 4, 1927, is in my handwriting. That check was either de-

(Testimony of Cameron F. Bradley)

posted in the bank or cashed by me on instructions given by Mr. Alford. I believe Mr. Alford was in Los Angeles on May 4, 1927, but I am not positive. The check of April 4, 1927, the indorsement was place on there by me and bears my initials. That check, I believe, was deposited in the old account before the trustee account was opened. The check dated April 7, 1927, signed by Madolin Hoch is indorsed in my handwriting and I believe it was deposited in the account of J. W. Alford or the Alford company. At that time the account was in the name of J. W. Alford & Company. Pardon me, it was in the name of Cameron Bradley, Trustee, in the American Bank. We only had the one bank. I believe it was in Securities Trust & Savings Bank. The indorsement on the check of Madolin Hoch, dated April 21, 1927, is in my handwriting. This writing here is the handwriting of one of the employees of the Bank of America. This check was taken there for a cashier's check which was finally issued so that the commission could be paid on this down payment of forty dollars. I took it to the bank for the cashier's check at Mr. Alford's request. The check dated May 9, 1927, signed by Madolin Hoch is indorsed in my handwriting and I believe it was deposited to the account of Cameron Bradley, Trustee. Check of Madolin Hoch, dated May 21, 1927, for $10.00 is endorsed by me and was deposited to the account of Cameron Bradley, Trustee. The check of June 8, 1927, is endorsed only in part by me; the first part is by Mr. Alford. The check of Madolin Hoch, dated June 21, 1927, is indorsed in my handwriting except the further indorsement of "Edward C. Kluter". Mr. Kluter is the man who at that time ran the cigar store in the lobby

(Testimony of Cameron F. Bradley)

of the Lincoln Building where we had our office. I gave that check to Mr. Kluter.

I first entered Mr. Alford's employ about the first of July, 1926, and continued in his employ until about the 7th or 8th of July, 1927. The salesmen were paid principally by check. Sometimes from the cash in the office I would cash those checks after they would come in. I resigned from Mr. Alford's employ when I was in Fort Worth, Texas. Mr. Alford was in Fort Worth, Texas, at the time.

I bear no ill will or bias or prejudice for Mr. Alford as I sit here testifying. Mr. Alford did have me arrested on a charge of embezzlement or grand theft but I do not now bear him any ill will as a result of that. I testified that I saw either Government's Exhibit 15 or a copy similar to this some two and one-half years ago in Mr. Alford's office. I can't recite what its contents are word for word. That would be impossible to remember. I read certain portions of this exhibit to identify it in my mind when it was handed to me by Mr. Armstrong this morning. I read a paragraph here and there and when I said I saw that or something similar to it I was referring to the document itself. Government's Exhibit 23 may have been the one I saw in Mr. Alford's office and not Government's Exhibit 15. They both contain one clause in particular that I know was in the copy I saw. I might have seen both of them. It is impossible that I did not see either. In the performance of my duties I did draw some checks payable to Mr. Carter after he had gone to Oklahoma and on more than one occasion. There was more than one occasion when the checks were drawn in Mr.

(Testimony of Cameron F. Bradley)

Carter's favor for the repair of the automobile he had there and for a portion of his salary. I remained in Fort Worth in the employ of Mr. Alford possibly four, five or six days.

The jury were thereupon excused by the court until 9:30 o'clock on the morning of July 24, 1929, whereupon the jury retired after which the following proceedings were had relative to the materiality of the testimony, as to the residence and place thereof of Cameron Bradley.

THE COURT: So ordered. In what particular do you think that evidence is material?

MR. FRIEDMAN: I think it is material for this purpose, first, not only on the general grounds I urged in asking the question, but on the additional grounds that I have been informed and caused to believe that this witness himself is now in the custody of the Federal authorities.

MR. ARMSTRONG: You mean Mr. Bradley? You mean by the Federal authorities here?

MR. FRIEDMAN: I don't know by what authorities, but that is my impression, that he is here in the custody of the Federal authorities. If that is so, I have a right to show that for the purpose of showing whatever bias or prejudice he may have.

THE COURT: No; I don't think so. If you can prove he has ever been convicted of a felony, that is a different thing.

MR. FRIEDMAN: I realize that is the rule. I may impeach him if he has been convicted of a felony.

THE COURT: No. You may prove that fact as going to his credibility, but you can't merely show that he

(Testimony of Cameron F. Bradley)

is detained or in charge of somebody. Everybody is presumed to be innocent until proven guilty.

MR. FRIEDMAN: It is a violent presumption sometimes, I know.

THE COURT: Your defendant is certainly to be given the benefit of that presumption.

MR. FRIEDMAN: I have no doubt of that.

THE COURT: If that is all you have, I will have to stand on the ruling.

In connection with these other documents, how many have not been admitted or have been rejected? How many of those documents have I reserved my ruling on?

MR. ARMSTRONG: There are very few. Practically all of them are just here for identification at this time and have not been offered in evidence, and will not be unless it should appear that in some way they would be relevant in rebuttal on the Ten-Way-To-Win-Syndicate. That is what most of this mass of documents that I have identified by Mr. Bradley to-day have reference to; that is, the Ten-Way-To-Win-Syndicate. I am merely identifying them. I am going to have the witnesses on the stand to identify them, but not for the purpose of offering them unless it becomes material.

MR. FRIEDMAN: Of course, that is something I can't forsee.

THE COURT: In connection with these documents you say Mr. Jackson and somebody else signed, while counsel didn't raise the point, I don't know but what he might have had it in mind in his general objection, you know the testimony tends to show, and, in fact, Mr. Brubaker testified that Mr. Alford on the 20th day of April,

(Testimony of Cameron F. Bradley)

1927, stated that the sale was all off on those lots in Oklahoma. That being so, unless some showing is made by the Government to the effect that Mr. Jackson or Mr. Russell or whoever signed that letter was still in his employ and was assisting him in carrying out the means by which the alleged scheme was to be carried into effect, the presumption would be that authority had ceased.

MR. ARMSTRONG: But, your Honor, the J. W. Alford Company, and J. W. Alford himself wrote letters to these people.

THE COURT: I am not speaking of his letters or any admission he may have made orally or in writing. I am speaking of the authority of the two persons whose letters you offered in evidence and to which counsel objected.

MR. ARMSTRONG: Mr. Alford was still accepting payments even as late as October from these people for this particular property.

THE COURT: What is the purpose of the letter written by Jackson? Is it just to show that he was carrying out the alleged scheme?

MR. ARMSTRONG: Yes.

THE COURT: And for no other purpose?

MR. ARMSTRONG: For no other purpose.

MR. FRIEDMAN: But the scheme had been abandoned.

THE COURT: That is true of the scheme of selling and defrauding, the alleged scheme, you might say; but if they were still carrying out that scheme of collecting on those original sales, that is one thing. It couldn't be received as evidence tending to establish the scheme itself

(Testimony of Cameron F. Bradley)

because that scheme apparently had been abandoned; that is, the scheme for further sales. But the scheme or the means for carrying into effect the scheme might still be carried on. You will have that in mind and examine that, and if it isn't material, let's not waste time on it. If it is, you gentlemen send me up your authorities and I will go into it. Is that the only question I have under consideration?

MR. ARMSTRONG: There is the question of the Count 6 letter.

THE COURT: What is that letter?

MR. ARMSTRONG: That is the letter where the foundation so far is this: We have proved the signature of Alford to the letter. It is on the letterhead of J. W. Alford & Company. It is signed by J. W. Alford, and a witness has testified that it was received through the mails. And it is in an envelope addressed to that witness.

THE COURT: That is the Gardner letter?

MR. ARMSTRONG: Yes. There is a stamp on the envelope and the stamp is cancelled, and there is a post mark on the envelope. That is the foundation. As I remember it, that is the *the* only other matter your Honor has under submission.

THE COURT: That isn't a count letter, is it?

MR. ARMSTRONG: Yes, it is a count letter. It is on Count 6.

THE COURT: Were the stenographers questioned about that?

MR. ARMSTRONG: No. We are not able to furnish the foundation for this letter.

(Testimony of Cameron F. Bradley)

THE COURT: Then you may furnish that Ninth Circuit case you spoke of, and counsel may furnish me with his cases, also.

MR. ARMSTRONG: I am perfectly willing to submit it on the Rasmussen case now.

THE COURT: Then I won't look at any other authorities. We will adjourn until 9:30 to-morrow morning.

Whereupon an adjournment was taken until Wednesday, July 24, 1929, at 9:30 o'clock a. m., at which time the trial was resumed and the following proceedings had:

THE COURT: Give me that letter that was offered in evidence, the one that counsel for the Government offered, having been sent through the mails.

MR. ARMSTRONG: If your Honor please, before your Honor rules on that, I have located one case last night that I would like to submit to your Honor.

THE COURT: I have reviewed the authorities. I just want to read the letter. Do you remember the number.

MR. ARMSTRONG: It is the letter that was written to Mr. Gordon. That, your Honor, is Government's Exhibit 33 for Identification.

THE COURT: This is the portion that I wanted to refresh my recollection about, in which it is stated, the second paragraph:

"In this connection, permit me to state that I have written you on three different occasions requesting you to call for your certificates and to bring all of your contracts, receipts and agreements with you. Also I have phoned your residence on numerous occasions, but never seem to catch you at home. In fact I have just put the phone

(Testimony of Cameron F. Bradley)

down and am going to try this letter. You must have received the last letter I wrote, or you would not know the address of 813 Chester Williams Bldg."

I think that the letter is clearly admissible and I will overrule your objection.

MR. FRIEDMAN: Is that the count letter?

MR. ARMSTRONG: That is the count letter.

MR. FRIEDMAN: Well, I did not know your Honor was going to rule so quickly. I wanted to amplify my objection.

THE COURT: Well, you may.

MR. FRIEDMAN: Now, in addition to the ground that I heretofore urged in my objection to the admission of this letter, which is Government's Exhibit 33 for Identification, I desire to object specifically on the grounds that there has been no foundation laid and that there has been no proof. I am now reiterating so that I will be sure to get all of my grounds.

THE COURT: All right.

MR. FRIEDMAN: But there is no proof in the record at the present time that the defendant wrote this letter, authorized its writings or had anything to do with the writing of this letter. We object on the second ground that there is no proof in the record at this time that that letter was deposited in a United States Post Office within the jurisdiction of this court or of the grand jury that returned the indictment. We object upon the further ground that it is apparent from the testimony introduced in the record at this time, this letter having been written in January, 1928, as I recall the date, that the letter was written long after the consum-

(Testimony of Cameron F. Bradley)

mation and abandonment or consummation or abandonment of any alleged scheme set forth in the indictment. We object upon the further ground that there is no proof of the scheme as set forth in the indictment or any substantial portion thereof, and therefore, there being no scheme, there can be no letter mailed in furtherance thereof.

Your Honor will recall that the testimony in this case stands uncontradicted at the present time that whatever dealings related to the Oklahoma property were abandoned and the sale of the property taken off of the market at no later day than the 23rd of April, 1927. This letter was written some nine months afterwards. It clearly can have nothing to do with any scheme to sell that property, because after the property was sold the sale was through. There is nothing on the face of the letter to show that it refers to the sale of any Oklahoma property, but it refers to the delivering of some certificates and calls for the bringing in of contracts and agreements which are not identified in the letter.

As I understand it, before letters are admissible in evidence in an action of this kind there must be some foundation. I haven't the letter before me, and I do not recall whether or not there was an envelope connected with that letter or not.

THE COURT: Yes.

MR. FRIEDMAN: There is. I will state that my recollection is that Mr. Gordon when on the stand was questioned relative to any envelope. The envelope has never been identified by any witness in this case. He states he received the letter.

(Testimony of Cameron F. Bradley)

THE COURT: He said he received it through the mails.

MR. FRIEDMAN: But he doesn't state he received it in that envelope or that he ever saw that envelope. Therefore, under the authorities I cited to your Honor yesterday, particularly the case of Brady vs. The United States, there was no proof that that letter was ever mailed by the defendant, and there is no proof it was ever mailed within the jurisdiction of this court, which is necessary prerequisite to the introduction of the letter.

I will call the Court's further attention to the fact that the face of that letter, so far as showing venue is concerned, is identical with the fact of the letter in the McNeill case, which the Government admitted was mailed from Fort Worth, Texas.

THE COURT: If there is any question as to whether he has identified the envelope, I will permit counsel to recall the witness before ruling on the question.

MR. ARMSTRONG: Very well. I will be glad to do that.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

Mr. ARMSTRONG: May I reserve the reading of the letter until this witness is finished?

THE COURT: You can reserve the reading until you recall Mr. Gordon.

Mr. ARMSTRONG: Very well, your Honor. I will see that he is recalled.

Cross-Examination of Cameron F. Bradley Resumed.

The written portion of the document you hand me is in my own handwriting with the exception possibly of the word written in pencil.

(Testimony of Cameron F. Bradley)

(The document was marked Defendant's Exhibit M for Identification.)

Exception No. 15.

MR. FRIEDMAN: I would like, if the Court please, our exception noted to the Court's ruling made yesterday after the jury retired to the effect that we could not inquire as to the present address and residence of the witness.

THE COURT: Very well.

Re-direct Examination.

(By Mr. Armstrong.)

I last saw the books of Mr. Alford in Forth Worth, Texas. I resigned the same day Mr. Alford told me to make those entries in the books which I refused to do. You showed me Government's Exhibit 15 and 23 in the Post Office Inspector's Office and I looked them over thoroughly at that time. I did not send Mr. Carter while he was in Oklahoma any money other than his salary and expenses on the car. (In reply to questions by a juror.) When Mr. Alford asked me to make the changes in the records in the book entries in the latter part of February relative to the land I made the changes reversing the entry. As I recall it the entry having been made debiting real estate and crediting "Due for Real Estate" the reversing entry as I remember it now was debiting "Due for real Estate" and crediting real estate. Those entries being for the same amount was prima facie to me that no payment had been made on the land. When Mr. Alford first brought up the subject he told me he had bought the land and to set the entry up in that manner and that he would give me the details later. The reversing entry was made

(Testimony of Cameron F. Bradley)

in the latter part of February. There was a new entry set up covering the real estate transactions on the Panhandle Petroleum Acres. That particular check that was cashed at the cigar store was so done because Mr. Alford was out of the city at the time and I believe the check was used as a portion of my expenses to go over to Fort Worth, Texas, at his instructions. Other checks were cashed in that manner at his instance and request. Such things were kept on a memorandum to show what money was disbursed and the manner in which it was disbursed. I didn't deposit the checks from the sale of the land and then issue vouchers covering expenses because Mr. Alford instructed me not to make any more deposits in the bank account. Not to make the bank balance any larger than was necessary so that Mr. Hesse or any of his other creditors could not attach the account. He had been hailed into court on supplemental proceedings by Mr. Hesse in connection with the judgment that was rendered and that was why many checks were returned to me with implicit instructions to cash them or have cashier's checks issued for them and disbursed the funds in that way for possibly two or three weeks. Mr. Russell was assisting Mr. Alford and Mr. Jackson in the handling of the sales and the deal that was later transferred into it. The only H. H. Harris that I know was the former attorney for Mr. Alford in some civil matters and two criminal matters that were on trial in the state courts. I do not know what the total amounts received for the sale of this acerage was. I believe it has been testified here that Mr. Alford testified before the Real Estate Board that he had sold six hundred acres. That would be $60,000 although my recollection is

(Testimony of Cameron F. Bradley)

that the moneys actually received did not, while I was with him at least, had not totaled that amount.

Re-cross Examination.

(By Mr. Friedman.)

I do not recall the time but I recall one instance, I believe, where the money received for land in Oklahoma was refunded. I cannot recall the name of the person but I think the amount was $100. In the case of C. Lee Baker the check was given back but I would like to state that that check was never entered on the books either as a receipt or as a disbursement. I was explicitly told to hold that check with the order. Mr. Jackson told me. He said, "I know all about this and just hold it."

Q. BY MR. FRIEDMAN: You say it was never entered on the books. Was that check presented to the bank for payment?

A. No, sir; it was not presented to the bank for payment.

Q. Never presented to the bank for payment?

A. Not for payment, no, sir.

MR. ARMSTRONG: That is objected to as having been asked and answered, and it is immaterial anyway.

Q. BY MR. FRIEDMAN: Now, a short while ago I handed you a paper which has subsequently been marked Defendant's Exhibit M for Identification, and you testified that you wrote that.

A. I most certainly did so testify and I did write it, but—

Q. Well, you can give your "buts" afterwards.

MR. ARMSTRONG: No, he has a right to explain it now.

(Testimony of Cameron F. Bradley)

THE COURT: Yes, you may explain it.

MR. FRIEDMAN: Pardon me.

A. Mr. Alford asked me to take that check to the bank before the date on the check. In other words, the check was post dated and he asked me to take that to the bank and see if there was an account in the bank at that time in the name of C. Lee Baker, or whatever the name is on there, and I so did, and upon my return to the office I wrote this memorandum to Mr. Jackson.

MR. FRIEDMAN: We offer this memorandum in evidence.

MR. ARMSTRONG: May I see it?

MR. FRIEDMAN: Surely.

MR. ARMSTRONG: I have no objection to it.

MR. FRIEDMAN: We ask it be marked as a defendant's exhibit with the appropriate number.

(Defendant's Exhibit M received in evidence.)

Re-direct Examination

Mr. Alford asked me to go over to the bank and inquire if they had an account at that time by a man named C. Lee Baker. He did not instruct me to cash the check or try to cash the check because the time I went over was prior to the date that went on the check.

Re-cross Examination

I do not recall what the date on the check was. I believe the check was post dated thirty or sixty days.

Re-direct Examination.

The signature on the letter you show me is Mr. Alford's

(Letter marked Government's Exhibit 67 for identification.)

(Testimony of Ellen O. Hancock)

TESTIMONY OF ELLEN O. HANCOCK FOR THE UNITED STATES.

ELLEN O. HANCOCK

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

I live at Sixth and Numas and was living in Los Angeles during the year, 1927. In February, 1927, Paul Kroeger talked to me about purchasing some land in Oklahoma. He called on me several times before I purchased. The document you show me is the subscription I signed and which was signed in my presence by Mr. Kroeger and the second document is a confirmation of the sale that I received. (Subscription agreement and confirmation admitted in evidence and marked Government's Exhibit 68.)

Mr. Kroeger told me that the property was oil land and that they were drilling a well or said that there was a well drilled on the adjoining land and that there was such good prospects for oil on this land that they were going to drill wells and that we would all be rich when the wells came in. He said he was working for Alford and I am sure he said Alford owned the land. He told me I would receive a deed of some kind. I didn't pay my $100. I paid $60 all together.

(Testimony of Jennie S. Mueller)

TESIMONY OF JENNIE S. MUELLER FOR THE UNITED STATES.

JENNIE S. MUELLER

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

I was living in Los Angeles in the early part of 1927 and now live at 1851 North Argyle. I purchased six acres of land in Oklahoma in the early part of 1927. I am the sister of Dr. Mueller who testified yesterday. My purchase was in addition to what he purchased. I first talked to Mr. Brubaker about this purchase. I think it was in February. The subscription agreement you show me refreshes my recollection as to the time it was. It was March 16th.

Mr. Brubaker said that the land was good for three different purposes; first, for oil land and agricultural purposes and home sites. And he said if it didn't prove for oil that Mr. Alford was going to spend $300,000 on a town site; and that he was going to drill a well, and if it didn't prove satisfactory, he was going to drill another; and if that didn't prove oil, he was going to put up a third well; and if that didn't prove good, he was going to build a town site. The property that we bought was just across the street from the main highway, and it was three miles from the Ramsey Well, and one mile from the first well that Alford was to drill.

Q. He told you that your land was situated one mile from the well he was going to drill?

(Testimony of Jennie S. Mueller)

A. That Alford was going to drill.

Q. Did he say whether or not this well that Alford was to drill was within the area covered by this 30,000 acres?

A. Yes, sir.

Q. Calling your attention to the signatures on that instrument, do you know whose they are?

A. Mine.

Q. And then there is one at the lower right-hand corner.

A. That is Mr. Brubaker's.

Q. Did you receive this confirmation?

A. Yes, sir.

MR. ARMSTRONG: The subscription agreement and confirmation just identified by the witness are offered in evidence.

(Government's Exhibit 69.)

Mr. Brubaker said we would get a warranty deed if we paid up our contracts and that was verified by Mr. Jackson and by Mr. Alford. I saw Mr. Alford concerning this about June 1, 1927, in his office. No one else was present. Mr. Alford told me to go ahead and pay up and he would give me a warranty deed after I got through making my payments. I went ahead and paid up my contracts and have never received a deed to the property. I demanded a deed and he said after he had paid up he would give it to me. I demanded a deed after I paid up. Then he wrote and said he would send us back the money. That was in July. The first part of July. I have never received any money from Mr. Alford.

(Testimony of Jennie S. Mueller)

Cross-Examination

(By Mr. Friedman)

I have assigned all my interest in and to any contracts I had with Mr. Alford to Mr. Brubaker. Mr. Brubaker did not tell me from whom Mr. Alford was purchasing the land. He just told me that Alford owned the land that I was buying. Mr. Brubaker did not tell me at the time he had the conversation with me relative to my buying the land and before I signed this contract from whom Mr. Alford was buying the land.

Q. I will ask you now, Miss Mueller, if it is not a fact that on the 18th day of February, 1928, before Monroe H. Conles, a notary public in and for Los Angeles County, California, in the case of Charles L. Brubaker vs. J. W. Alford, numbered in the Superior Court of the State of California, No. 234,583, your deposition was not taken in that case, and in reply to queries put to you by Mr. Harris, attorney for Mr. Alford, the following questions were asked you, to which you gave the following replies.

MR. ARMSTRONG: I think the proper thing is to show the witness the transcript, rather than to read it to her.

THE COURT: She may examine it before she answers, if she so desires.

BY MR. FRIEDMAN:

Q. Just read all of page 25, if you will. You have read it?

A. Yes, sir.

Q. Now, picking up my question where I left off, I will ask you if at the time and place I designated, on examination by Mr. Harris, the following questions were asked of you, to which you gave the following replies:

(Testimony of Jennie S. Mueller)

"Q. No; listen. Let us confine ourselves to the conversation you had with Mr. Brubaker first, and then we will come to the others. This conversation you had with Mr. Brubaker in the Hall of Records? A—Yes. Q. Tell us everything that was said there that you can remember. A—Well, he was telling me, as I told you, about the land being a wonderful buy, and that Mr. Alford had bought all this acerage and that the company was going to put in —I forget how many thousand of dollars—to develop it, put in their own oil wells, and if they did not strike oil, the land would be worth double anyway, because it was going to be a town of his own, and they were going to subdivide, because it was right near a city. Q—Did he tell you whom Mr. Alford had bought *if* from? A—Yes. Q—Whom? A—A party by the name of White. Q.—J. St. Paul White? A—Yes."

A. Well, that was the second time that I saw Mr. Brubaker, not the first time.

Q. Well, the question now is were those questions asked of you and did you give those replies?

A. Yes.

That was the second conversation I had with Mr. Brubaker and before I purchased the land. I had a conversation with Mr. Alford on June 1, 1927, at which he told me he would give me my deed after I had paid my money and I went on and paid it. He said a warranty deed.

Mr. Alford told me than that I should go ahead, and I had $60 and I said, "Well, what will I do? Shall I drop it?" And he says, "No, you just go ahead and pay, pay up your contract", and he says, "I will give you a deed." And I says, "Really a deed?" And he says, "A warranty deed." And with that I went on.

(Testimony of Jennie S. Mueller)

I know the difference between a grant deed and a warranty deed. Prior to the time I purchased this property Mr. Brubaker did not make any statements to me as to the terms under which Mr. Alford was buying the land. Page 26 of the deposition you showed me a while ago refreshes my recollection but that was not the first time, that was after I had seen Mr. Jackson the second or third time and after I had made my first payment.

Q. I will ask you whether or not in your deposition, given and taken on the 18th day of February, 1928, in this city and county, before Monroe H. Conlee, a notary public, in the case of Charles L. Brubaker vs. J. W. Alford, which case I designated in my previous question, the following questions were not asked of you, to which you gave the following replies:

"Q. *No*, listen. Let us confine ourselves to the conversation you had with Mr. Brubaker first, and then we will come to the others. This conversation you had with Mr. Brubaker in the Hall of Records? A—Yes. Q.—Tell us everything that was said there, that you can remember. A—Well, he was telling me, as I told you, about the land being a wonderful buy, and that Mr. Alford had bought all this acerage, and that the company was going to put in,—I forget how many thousand of dollars—to develop it, put in their own oil wells, and if they did not strike oil, the land would be worth double anyway, because it was going to be a town of his own, and they were going to subdivide, because it was right near a city. Q.—Did he tell you whom Mr. Alford had bought it from A—Yes. Q—Whom? A—A party by the name of White. Q—J. St. Paul White? A—Yes. Q.—Did Mr. Brubaker say

(Testimony of Jennie S. Mueller)

anything about desiring an interest in the purchase of your himself? A—No. Q. He did not take an interest with you? A—No. Q—This contract then was entirely your own? A—Absolutely. Q—Did he show you any documentary evidence of whom Mr. Alford had bought the property from, or anything of that kind? A—No. He showed me some papers, but of course I couldn't tell you what was in it now. Q—There was nothing very definite in your mind about whom he had purchased it from, or on what terms, or anything of that kind? A—He had to pay, is that what you mean? Q—No, I don't mean on what terms you purchased it, but under what terms Mr. Alford purchased it. A—Well, he was supposed to pay so much a month on the property, and then by the time we got through paying, he would own this land."

Did you—

A. Yes.

I received a letter from Mr. Alford offering me back my money and telling me that he would return my money. At the time I received that letter I had not signed any complaints charging Mr. Alford with any criminal offense. At or about the time I received this letter from Mr. Alford offering me back my money I had filed complaints against Mr. Alford before the Real Estate Commission of this state.

Re-direct Examination

(By Mr. Armstrong.)

I did not personally sign the complaint before the Real Estate Commission. I merely appeared there as a witness.

(Testimony of Bessie McCluggage)

Q. Now, with reference to your testimony given in this deposition that Mr. Friedman has examined you about, particularly with reference to this question and answer: "No, I don't mean on what terms you purchased it, but under what terms Mr. Alford purchased it," and this is your answer: "Well, he was supposed to pay so much a month on the property, and then by the time we got through paying he would own this land."

When did you first learn of those conditions?

A. Not until after I signed my contract.

I merely assigned my interest to Mr. Brubaker for the purpose of suit.

Re-cross Examination.

(By Mr. Friedman.)

The documents you hand me bears my signature. (Document marked Defendant's Exhibit N for identification.)

TESTIMONY OF BESSIE McCLUGGAGE FOR THE UNITED STATES.

BESSIE McCLUGGAGE

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

In the early part of 1927 I made a purchase of some land in Oklahoma. I first talked about that purchase on the 7th or 8th of February, 1927, and then I made a subsequent purchase on the 25th of February. I dealt with Mr. Brubaker. The first time I bought six acres and the

(Testimony of Bessie McCluggage)

second time two making eight acres in all. The contracts you hand me represent the acerage I purchased and I received this confirmation.

The check you show me I signed and sent to J. W. Alford & Company in payment for the acerage. (The two contracts and the confirmation which were Government's Exhibit 46 for Identification together with the checks which were Government's Exhibit 47 for Identification were admitted in evidence and marked Government's Exhibit 46 in Evidence.)

Mr. Brubaker told me first that this was good agricultural land and then he said that there were possibilities of oil there, that we would—that this property he was showing us, and the property we had bought, was within about three miles of the Ramsey well, which was a producing well, and then he said that there was a highway that was going directly in front of this property from Boise City, and that Mr. Alford is going to put a town site right across from this property, and that, of sourse, would increase the value of the property, and then there was a railroad going through that was only about a mile and a quarter from this property, and of course that would bring people into this locality. And he said that Mr. Alford had such faith in this property that he was spending $300,000 of his own money to improve this property.

Q. Did he say how it was to be improved?

A. Yes; this was to be used in improving the town site and in drilling oil wells.

Q. State the balance of the conversation.

A. And Mr. Brubaker had such faith in this property that he was willing to go in with me on this proposition,

(Testimony of Bessie McCluggage)

and I relied greatly on Mr. Brubaker's judgment, and he told me that I should buy this land in fee simple, and when I had finished making all my payments, that I would receive a warranty deed.

Q. Anything else?

A. Well, he said—I think that covers about all of it.

Q. Did you make all of your payments?

A. Yes.

Q. And did you ever receive a deed?

A. No.

Exception No. 16.

Q. I will show you a letter dated May 18, 1927, which is Government's Exhibit 4 for identification, and ask you to examine the letter and the envelope and state whether or not you received that letter in that envelope on or about the date the letter bears.

A. Yes, I received that.

Q. And you received both of them through the mails?

A. Yes.

MR. ARMSTRONG: The letter being Government's exhibit 4 for identification, just identified by the witness, is offered in evidence in support of count 1 of the indictment.

MR. FRIEDMAN: To which we object, on the ground it is incompetent, irrelevant and immaterial; that the proper foundation has not been laid; that there has been no proof to show that the defendant Alford mailed or cause to be mailed, or authorized the mailing of, such a letter. There is no proof to show that the letter was mailed within the jurisdiction of this court; that it is apparent, the letter bearing date May 18, 1927, that the

(Testimony of Bessie McCluggage)

letter was not mailed in furtherance of or in pursuance or in attempted execution of any scheme or plan to defraud, as attempted to be set forth in the indictment or the bill of particulars on file herein, and upon the further ground that it is apparent the letter was mailed, on the face of it, from the date—that the letter was mailed after any alleged plan as proven or attempted to be proven by the Government in their case to defraud was abandoned, and that it does not appear from the letter that it was written in execution of any scheme to defraud at all, and upon the further ground that the Government has failed to establish any scheme to defraud at all, either as alleged in the indictment or as described in the bill of particulars, or both, or otherwise, or at all.

THE COURT: Is that all?

MR. FRIEDMAN: I can't think of anything more, your Honor.

MR. ARMSTRONG: Would your Honor like to see the letter?

THE COURT: Is that Exhibit 4?

MR. ARMSTRONG: Yes.

THE COURT: I have that in mind. That was the letter that was mailed the 18th of May, 1927?

MR. ARMSTRONG: Yes, your Honor.

THE COURT: The objection is overruled. It may be admitted.

MR. FRIEDMAN: Exception.

Upon receipt of that letter I went to the office of J. W. Alford & Company and I talked to someone in response to this letter. When I went into the office they admitted they

(Testimony of Bessie McCluggage)

had sent the letter and that is what they went to see me for.

I never received a deed and I never talked to Mr. Alford.

Exception No. 17.

Q. Did you talk to anyone in the office about it?

A. About the deed?

Q. Yes.

A. No; I never had occasion to do that.

Q. You paid up your contract and never received a deed?

A. No. You see, when I finished paying for it the office was in Fort Worth, Texas.

Q. To refresh your recollection, did you talk to a Mr. Henderson about it?

A. I did. I beg your pardon. Mr. Henderson came out to the house after Mr. Alford had sent me a letter asking me—

MR. FRIEDMAN: I ask that the foundation be laid.

Q. BY MR. ARMSTRONG: When was that conversation?

A. With Mr. Henderson?

Q. Yes.

A. That was the very last of July or the first of August, 1927.

Q. That was at your house?

A. That was at my house.

Q. Was anybody present besides you and Mr. Henderson?

A. No.

Q. Will you state what that conversation was?

(Testimony of Bessie McCluggage)

MR. FRIEDMAN: I object to that on the ground the proper foundation has not been laid; on the further ground that there is no proof in the record that Mr. Henderson was ever authorized to conduct any negotiations with Miss McCluggage relative to the time the witness states she had these negotiations.

THE COURT: There is testimony in the record to the effect he had left Mr. Henderson here to attend to any annoying matters that might arise during his absence.

MR. FRIEDMAN: There was testimony by Mr. Bradley to the effect that in Fort worth, Texas, Mr. Alford had made such a statement, but that is not proof that that is a fact. That is only proof he made such a statement.

THE COURT: It is proof of the fact if the jury believe Mr. Bradley's statement. In other words, there is proof tending to show it.

MR. FRIEDMAN: There is proof tending to show possibly—

THE COURT: But if you had to wait until the defendant was examined in his own behalf, of course, that would mean you couldn't proceed with the case in the regular order. I will overrule the objection.

MR. FRIEDMAN: An exception.

Mr. Henderson said Mr. Alford was not able to deliver that acerage to me and that he would return my money by return mail. And he said, "No client of Mr. Alford's has ever lost a cent of money through him." And he said I would receive my money through return mail if I wished it I never received my money back.

(Testimony of Charles E. Hood)

Cross-Examination

(By Mr. Friedman)

I agreed with Mr. Brubaker to purchase eight acres of land in Oklahoma. Mr. Brubaker has an interest in that with me. In the first contract he has fifteen percent interest. But he has none of the second. Mr. Brubaker never told me how much commission he was receiving for the sale of this land nor did he show me any literature that showed how much commission he was receiving for the sale of this land. I have since assigned all my right and interest in these contracts to Mr. Brubaker.

At the time Mr. Henderson called upon me he said Mr. Alford could not deliver the acerage to me. I was never told that before. At the time I had my conversation with Mr. Henderson my contracts were fully paid up. This conversation with Mr. Henderson was the last of July or the first of August, 1927. I have not the letter I referred to in my conversation with Mr. Henderson. (Mr. Armstrong stated it was not in his possession.)

TESTIMONY OF CHARLES E. HOOD FOR THE UNITED STATES.

CHARLES E. HOOD

produced as a witness on behalf of the United States having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

In May, 1927, I purchased some acerage in Cimmarron County, Oklahoma, through Mr. Pierce. I first saw him in my place of business during May, 1927. At that time

(Testimony of Charles E. Hood)

he stated to me that they had—I think it was—30,000 acres of land in Cimarron County, Oklahoma, that they were drilling for oil on. He told me that Alford was going to drill for oil. I cannot say whether he told me he was drilling or was going to. He told me about the Ramsey well being two or three miles away. It was already drilling. He said I would receive a deed to the one acre of ground in the event I completed my contract. I did not complete my payments all together. I paid $80.00.

Exception No. 18.

Q. I show you a letter dated May 24, 1927, which is Government's Exhibit 5 for Identification, and addressed to yourself. I will ask you to examine that letter and state whether or not you received that letter through the mails on or about the date the letter bears.

A. Yes, sir.

Q. The answer is yes?

A. Yes.

MR. ARMSTRONG: The letter just identified by the witness is offered in evidence in support of Count 2 of the indictment.

THE COURT: What is the exhibit number?

MR. ARMSTRONG: It is Exhibit 5 for Identification.

MR. FRIEDMAN: To which we object on the grounds it is incompetent, irrelevant, and immaterial; that no proper foundation has been laid; that there has been no proof offered by the Government that this letter was mailed within the jurisdiction of this court or within the jurisdiction of the grand jury who returned this indictment. In that regard I will call the Court's attention to

(Testimony of Charles E. Hood)

the fact that there was no envelope accompanying this letter; that it is identical in form to the letter written to Mr. McNeill, which, when not accompanied by the envelopes, do not show they were mailed within the jurisdiction of this court. And we object on the further ground there is no proof in this record of any kind or character that Mr. Alford mailed or authorized the mailing of this letter to this person or to any other person; and that it is apparent from the date of the letter that the letter is not a letter written or mailed, if it were mailed, in execution of any alleged scheme to defraud as set forth in the indictment or otherwise. We object on the further ground that the date the letter bears is one which is after the proof disclosed by the Government's witnesses shows that this entire transaction or alleged scheme to defraud, if there was one, was abandoned or terminated.

THE COURT: I will overrule the objection, and leave it to the jury to determine.

MR. FRIEDMAN: An exception.

(Witness continuing.) I received that letter through the mails and was living in Long Beach in Los Angeles County at the time. (Government's Exhibit 5 for Identification admitted in evidence and marked No. 5 in evidence.) I went to the office of J. W. Alford & Company but I can't remember if it was soon after receiving this letter. I received a notice they were to have a meeting there and I went to that meeting. That was the only time I went. It was after I got that letter. I had no other holding with J. W. Alford & Company other than the land I spoke of.

The contracts and confirmation you show me is the contract and confirmation covering my portion of this acer-

(Testimony of C. O. Davis)

age. (The contract and confirmation were admitted in evidence and marked Government's Exhibit 71.) I made my last payment in August, 1927. (The contract showed that the sale was made on March 30, 1927, and not in May.) I received Government's Exhibits 50 and 51 for identification through the United States mails about the date the letter bears.

Cross-Examination

(By Mr. Friedman.)

The document you show me has my signature appended thereto. (Document marked Defendant's Exhibit O for identification) The second document you show me also has my signature appended thereto. (Document marked Defendant's Exhibit P for identification.) I only had one conversation with Mr. Alford. Prior to the last payments I made under the contract I did not know no deed to the land was to be delivered to me. If I did know I do not recall it now.

TESTIMONY OF C. O. DAVIS FOR THE UNITED STATES.

C. O. DAVIS

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

During March, 1927, I was manager of the display promotion department of the Los Angeles Examiner. During that time I had a conversation with Mr. C. L. Bru-

(Testimony of C. O. Davis)

baker following which conversation I received a letter from J. W. Alford & Company. Government's Exhibit 16 for identification is the carbon copy of the letter I received. I have looked for the original of that letter and have not been able to find it. I do not recall by whom this letter was signed. My secretary had instructions regularly at the end of each year to destroy the mail of the preceding year so that at the end of 1928 all the mail I had received during 1927 was thrown out. Since that time I have *look* for the original of this letter and have been unable to find it.

Cross-Examination

(By Mr. Friedman.)

Whatever letters I received in 1927 I turned over to my secretary with instructions to place them in the files. I have not now the same secretary. I am no longer with the Examiner. At the time I made a search of the files which I realized was a futile thing to do anyway because they were destroyed and I was aware that they had been, that particular secretary was not with me. She had been for eight years but she was not then. Of my own knowledge I know what my secretary did with that letter. I gave here instructions to destroy everything and then I saw that the files were destroyed. I have had no conversation with whoever my secretary was at that time about that particular letter.

TESTIMONY OF DOLORES BINGHAM FOR THE UNITED STATES.

DOLORES BINGHAM

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

In the early part of 1927 I made a purchase of acerage in Cimarron County, Oklahoma, from Mrs. Sonia West. The two subscription blanks and the two confirmations you show me are the subscription blanks and the confirmations representing my purchases. (The subscription and confirmations were admitted in evidence and marked Government's Exhibit No. 72.) At about the time these orders bear date I had a conversation with Mrs. West which took place in my office in Los Angeles. I don't remember very much about the conversation. I did not entirely complete my payments. All together I paid $150 on the two. Ultimately I received a note for that $150. The note was given me in October, 1927, and was dated March 1, 1927. The note was due December 1, 1927. To date the note has not been paid.

Cross-Examination

(By Mr. Friedman.)

The interest on the note was paid to December, 1927. The note was signed by Mr. Alford personally. The total amount of my contracts call for the payment of $200.00. When Mr. Alford gave me the note he told me he could not give me the deed to the land but that he would give me a note and pay it when he could.

(Testimony of Walter E. Floyd)

TESTIMONY OF WALTER E. FLOYD FOR THE UNITED STATES.

WALTER E. FLOYD

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

In the early part of 1927 I purchased some acerage in Cimarron County from Mr. C. D. Jackson. I first talked to Mr. Jackson about it in Mr. Alford's office but Mr. Alford was not present. I think this was late in February of 1927. At that time Mr. Jackson told me he was buying potential oil land in Cimarron, Oklahoma, and that the oil land ran through that section and that there was considerable possibility of making considerable money on it. I don't think he mentioned anything as to the ownership of the land. I don't remember that he said anything about what I would receive if I paid up my contract but I understood I was buying the land. I think he said that Mr. Alford controlled the land and was planning to drill himself. I did not finish paying for the land. I paid $100 all together but that was after I had exchanged my contract. I never received a deed to the land.

Cross-Examination

(By Mr. Friedman.)

I now hold 10 shares of stock in Mr. Alford's company which were given to me by Mr. Alford for the money I had paid him. The name of the company is The Western Land & Development Company. I have the stock cer-

(Testimony of Walter E. Floyd)

tificate with me. Prior to completing my payments for the land in Oklahoma I was not told that Mr. Alford could not complete his end of that contract and could not give me a deed.

Re-direct Examination

(By Mr Armstrong.)

Mr. Alford told me that this was his company.

Mr. Armstrong then read the stock certificate into the record as follows:

MR. ARMSTRONG: (Reading) "No. 43, shares 100, Western Land & Development Company, incorporated under the laws of the State of Nevada; capital stock 250,000 shares without nominal or par value, fully paid, non-assessible.

"This certifies that Walter E. Floyd is the owner of 100 shares of the capital stock of the Western Land & Development Company, transferable only on the books of the corporation in person or by attorney on surrender of this certificate properly endorsed.

"In witness whereof the corporation has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 29th day of April, 1929. Dan Moland, secretary, F. A. Stevens, president. The seal of the corporation."

(Witness continuing.) I received that certificate about the date it bears. Mr. Alford did not give it to me himself but I exchanged it for another certificate and his secretary gave it to me. Previous to that I had a conversation with Mr. Alford concerning this particular corporation and he told me this was his company and engaged in

(Testimony of Ada McKean.)

anything that might produce a profit but principally in land in Las Vegas, Nevada—land and water.

TESTIMONY OF ADA McKEAN FOR THE UNITED STATES.

ADA McKEAN

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong.)

I made a purchase of land in Oklahoma from Mr. Moxness in March or April, 1927. Mr. Moxness told me that Mr. Alford expected to drill for oil and there was a well near there that was good and if they *go* oil those who invested would make some money. I do not remember the name of the well that he said was being drilled near there. I did not complete my payments. I paid $120 all together and had contracted to *apy* $200. I think I made my last payment either in July or August, 1927. I received Government's Exhibit 6 for identification through the mails on or about the date it bears. The stock certificate marked Government's Exhibit 61 for identification is my stock certificate.

Cross-Examination

(By Mr. Friedman.)

That stock certificate has been out of my possession for sometime. The postal inspectors took it from me and have had it ever since. This stock certificate was delivered to me in exchange for the first papers I received from

(Testimony of Nora D. Dickerson)

Mr. Alford. At or shortly before the time I made my last payment I was not exactly informed that Mr. Alford was not going forward with the Oklahoma deal.

The Government then offered in evidence the letter and stock certificate which were admitted and marked respectively Government's Exhibits 6 and 61 in evidence.

TESTIMONY OF NORA D. DICKERSON FOR THE UNITED STATES.

NORA D. DICKERSON

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong)

In the early part of 1927 I purchased some acerage in Cimarron County, Oklahoma, from Mr. Gale. I purchased five acres. I couldn't tell you when I had my first conversation with Mr. Gale but it was in the first few months of 1927. Mr. Gale said that Mr. Alford had several thousand acres down there and they were selling them in five and ten acre lots and they were drilling within—well I couldn't say just how close. He did not say who he meant when he said, "They were drilling." I think Mr. Gale said an oil well was to be drilled about half a mile away from the land I was purchasing. He said Mr. Alford owned the land. I received a deed to this land. I can't recall whether the deed was given to me outright or whether I was to get it at the final payment. I paid in installments. I received something like the papers which

(Testimony of Madolin B. Hoch)

are Government's Exhibit 70. I can't recall if that is all I received as evidence of title to the land because I turned the papers over to the Post Office Department and I can't just recall what it is. I turned over all the papers that I had. I cannot recall whether I turned any of the papers over to Mr. Alford. I didn't have any dealings with Mr. Alford whatever. I received a note which I have with me. (Witness hands papers to Mr. Armstrong.) Mr. Alford gave me the note himself. It is dated March 1, 1927, and I received it shortly after the public meeting at his office. It was after March 1, 1927. The note has never been paid nor any part of it. (Note identified by witness, admitted in evidence and marked Government's Exhibit 73.)

Cross-Examination

(By Mr. Friedman.)

Up to the time I received this note I had paid in my contract about $250.00. I didn't have any conversation with Mr. Alford at the time I received this note in which I claimed I had paid in more money than Mr. Alford said I had. I only claimed $250.00 and I wondered at him making it $350.

TESTIMONY OF MADOLIN B. HOCH FOR THE UNITED STATES.

MADOLIN B. HOCH

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong.)

I purchased through Mr. Elrick land in Cimarron County, Oklahoma, in April, 1927. The two subscriptions or orders you show me contain my signatures and those

(Testimony of Madolin B. Hoch)

of Mr. Elrick. (The two documents admitted in evidence and marked Government's Exhibit 74.) On account of these contracts I paid in all $200. I first talked to Mr. Elrick in my own office and no one else was present. Mr. Elrick said he was with J. W. Alford and was selling some land in Oklahoma which was considered in a strategic position in the matter of oil as it was in a straight line between two established oil fields. One the Ramsey and I can't recall the other. I understood the Ramsey well was producing at the time. Mr. Elrick said something about their planning to drill a well. I thought he said they were going to drill in thirty days. I do not recall anything being said concerning Mr. Alford's ownership of the land. He told me I would receive a deed on completion of the payments. I made the payments regularly each month and sent the last check when I made the final payment. I paid regularly according to the contract. The two papers you show me are confirmations that I received one of which I received in the envelope attached thereto. I would say I received the one dated April 21st by mail. (The two confirmations admitted in evidence and marked Government's Exhibit 75.) I received Government's Exhibits 54 and 55 for identification through the mails on or about the dates the letters bear and in the envelopes attached to each. I received Government's Exhibits 7 and 8 for identification through the mails on or about the dates they bear. (The letter dated December 7, 1927, together with the envelope were then offered in evidence by the Government.

Exception No. 19.

MR. FRIEDMAN: We will object to the letter offered by the Government on the grounds it is incompetent, irrele-

(Testimony of Madolin B. Hoch)

vant and immaterial; the proper foundation has not been laid; no proof introduced showing that the same was mailed or authorized to be mailed by the defendant or written or authorized to be written by the defendant. It is without the issues of the indictment, plea and bill of particulars, and it is a letter purporting to have been written on December 7, 1927, which is subsequent to the consummation or abandonment of any purported or pretended scheme of any kind or character established by the testimony in this case.

MR. ARMSTRONG: I would like to show it to your Honor (handing document to the Court).

THE COURT: For what purpose is it offered?

MR. ARMSTRONG: It is offered merely—

THE COURT: Well, I will admit it for the purpose of showing that the defendant was informed in some manner that the sale or sales had been made to this witness, and that he, having knowledge of that fact, recognized the sale as a proper one made by his agent or agents, and confirmed their acts, and for no other purpose.

(Government's Exhibit 54 received in evidence.)

MR. FRIEDMAN: May we have our exception?

THE COURT: Yes.

(Witness continuing.) I was never refunded my money and I never got a deed to the property.

Exception No. 20.

MR. ARMSTRONG: I offer in evidence the two letters, Government's Exhibits 7 and 8 for identification, Government's Exhibit 7 for identification being dated May 24, 1927, and Government's Exhibit No. 8 being dated

(Testimony of Madolin B. Hoch)

May 18, 1927. These letters have been identified by the witness.

MR. FRIEDMAN: We object to the introduction of each of these documents, Government's Exhibit No. 8 and Government's Exhibit No. 7 for Identification, or either or both of these documents, upon all of the grounds set forth in support of our objection to the last letter. I don't want to repeat them all if it is not necessary.

MR. ARMSTRONG: I might say to your Honor these two letters are similar in tenor to the letters offered in support of Count 1 of the indictment.

THE COURT: I admit these letters as tending to show that the defendant admitted that he had received the money which the witness says that she paid on the contracts referred to, and as tending to show that the agents or agent who made the sales was authorized to do so and was acting within the line of his authority as such salesman. I am assuming, and I believe I recall, that they were identified as being in the handwriting of the defendant, Mr. Alford, or signed in his handwriting.

MR. ARMSTRONG: Yes; the signatures have been heretofore identified.

MR. FRIEDMAN: That is correct. We would like to note an exception to the admission of each of these documents and to the Court's ruling thereon.

The COURT: Yes. The exhibit numbers are what?

MR. ARMSTRONG: 7 and 8.

THE COURT: For identification. What are they now?

MR. ARMSTRONG: They are 7 and 8 in evidence.

THE COURT: They take the same number?

(Testimony of Josephine D. Mein)

MR. ARMSTRONG: Yes, your Honor.

(Government's Exhibits 7 and 8 received in evidence.)

(Witness continuing.) After my memory has been refreshed I would say I made the last payment on October 8, 1927.

Cross-Examination

(By Mr. Friedman.)

I didn't call at the office of Mr. Alford pursuant to either one of these letters but a day or two later Mr. Russell called on me. I don't believe that prior to my making the last payment on account of these contracts that I knew or had been informed that Mr. Alford could not deliver me a deed. Mr. Russell did not make that statement to me.

Re-Direct Examination.

Had I known that Mr. Alford could not deliver the acreage to me I would not have made those payments.

TESTIMONY OF JOSEPHINE D. MEIN FOR THE UNITED STATES.

JOSEPHINE D. MEIN

produced as a witness on behalf of The United States, having been first duly sworn, testified in substance as follows:

Direct-Examination

(By Mr. Armstrong)

In March, 1927, I purchased some land in Oklahoma from Mr. Elrick. I think I purchased three acres and I paid for the entire three acres. Mr. Elrick told me there was an oil well on that land and they were going to drill

(Testimony of Josephine D. Mein)

more wells. I think he said Mr. Alford owned the land and we were supposed to get a deed. I made my last payment on May 31, 1927. I recall having received the letter marked Government's Exhibit 10 for Identification. (The letter was offered in evidence and marked Government's Exhibit 10 in evidence.) I did not go to the office of Mr. Alford. We paid the entire $300. I do not know whether the check was cashed and returned as cancelled. Mr. Mein attends to the checks. Mr. Alford told Mr. Mein over the phone that he never received the check. Then Mr. Mein sent another check by registered mail. I don't know whether the check was ever returned to Mr. Mein but my best judgment is that it was cashed. Whatever the land cost we paid the whole thing.

Cross-Examination.

(By Mr. Friedman.)

I know that the entire sum of $300 was paid. I didn't pay it but my husband did. I don't know but what it is a fact that only part of my contract was paid by me and my husband. I have the stub here. These are what I go by. I have no objection to your seeing them. (Witness hands check stubs to counsel.)

MR. FRIEDMAN: In order that you won't have to look at them I think I have added them up correctly and your checks show individual payments of $160 and then a stub showing a check for $140 which, as you testify, is $300.

(Witness continuing.) I couldn't say of my own knowledge whether the check of $140 was ever cashed by Mr. Alford. After receiving the letter we did not go to Mr. Alford's office. Mr. Alford returned all our money to us.

(Testimony of Kimpton Ellis)

We did not go near the office to get it. Neither my husband nor I have ever been there.

Re-direct Examination.

I really couldn't say how soon after June 1, 1927, the money was paid back because a friend of ours went down to Mr. Alford's and he gave him a cashier's check for the amount of money. This friend was Mr. John Enright who is a real estate man. I couldn't say how long after June 1st it was.

Re-cross Examination.

I think it was within a very few days after the check for $140 had been sent in.

MR. FRIEDMAN: That is all, thank you.

THE COURT: Instead of receiving it in evidence for the purpose of showing the payment of $140, it is received for the purpose mentioned—not for the purpose of showing the payment of $140—but for the purpose of showing the receipt of the check for $140, as stated in the letter. That is all.

TESTIMONY OF KIMPTON ELLIS FOR THE UNITED STATES

KIMPTON ELLIS

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong.)

I am an attorney at law practicing in Los Angeles and was the attorney for Charles L. Brubaker in the case of Charles L. Brubaker vs. J. W. Alford, No. 234583, in the

(Testimony of Kimpton Ellis)

Superior Court of the State of California for the County of Los Angeles. As such I was present in the office of H. H. Harris in the Bank of Italy Building, Los Angeles, on the 5th and 12th days of November, 1927, at the time of the taking of the deposition of J. W. Alford during the course of which I acted as the attorney for Charles L. Brubaker. I think I am able from my recollection to relate some of the testimony that was taken there. I recall in the testimony a letter which was written to Mr. William Stromberg. The letter dated July 8, 1927, addressed to Mr. William Stromberg and which you now show me is one about which Mr. Alford was examined during his deposition. Mr. Alford has admitted to me personally as well as in the action that that letter bears his signature. I heard Mr. Alford speak of this letter at the time the deposition was taken which you have referred to in your questions to me. At the time of the taking of that deposition I had that letter in my possession and handed it to Mr. Alford and he then identified the signature and admitted at that time that he had mailed it to my client, Mr. Stromberg.

MR. ARMSTRONG: At this time, if your Honor please, I offer this letter in evidence, marked Government's exhibit 67 for identification.

MR. FRIEDMAN: May I see it?

Mr. Armstrong: Yes, surely. (Handing document to counsel.)

MR. FRIEDMAN: Well, I have two objections to make to this letter, if the court please. One is the general objection that the letter is incompetent, irrelevant, and immaterial; that it is not part of any of the issues raised

(Testimony of Kimpton Ellis)

by the indictment, plea or bill of particulars; that it bears date as of July 28, 1927, and on its face appears to be a letter written after the completion or abandonment of any pretended scheme alleged in the indictment or established by the evidence. And that is the general objection, in part, which I have made to all these other letters. But specifically I desire to object, under the prior rulings of this court, to paragraphs 1, 2 and 3 on page 2 of the letter, which your Honor can inspect.

THE COURT: Let me see it.

MR. ARMSTRONG: I am offering the letter, I might say, if your Honor please, for the purpose of showing the intention of the defendant. It goes to intent only. And I might further say that I am perfectly willing to have stricken from the exhibit, paragraphs 6—well, of course, I have not an exact copy of that—

Mr. Friedman: Well, I can tell you. I know what they are. You don't mind my looking at your copy?

MR. ARMSTRONG: No, not a bit.

THE COURT: Then you propose to strike out the four last paragraphs?

MR. ARMSTRONG: Not the four last, your Honor, but commencing with the paragraph which commences "Some time ago," and down to the next to the last paragraph—

THE COURT: That is down to the fourth paragraph—

MR. FRIEDMAN: As I understand it, it is the first and second paragraphs on page 2, and the first part of paragraph 4, over to and including the word "time".

(Testimony of Frank E. Sharon)

MR. ARMSTRONG: Yes, your Honor. That is the purpose of the offer.

THE COURT: I will sustain the objection to that portion of the letter, and overrule the objection as to the remainder, and admit it in evidence.

MR. FRIEDMAN: Note an exception.

(The letter was then admitted in evidence and marked Government's Exhibit No. 67.)

In the giving of said deposition Mr. Alford stated that instructions were given to Mr. Brubaker as to the acerage that he should sell.

Q. Now, what did he say about that?

MR. FRIEDMAN: I object on the grounds it is not the best evidence. The deposition is the best evidence.

THE COURT: That is correct.

(Witness continuing.) I do not know where the original deposition is at this time.

Mr. ARMSTRONG: May I withdraw this witness for a moment? I am quite sure I can lay the foundation.

THE COURT: Yes.

(Witness continuing.) The name of the stenographer who took the deposition is Mary Ann Hudson.

(Witness withdrawn temporarily).

TESTIMONY OF FRANK F. SHARON FOR THE UNITED STATES.

FRANK F. SHARON

produced as a witness for the United States having been duly sworn, testified in substance as follows:

(Testimony of O. F. Wilson)

Direct Examination

(By Mr. Armstrong.)

Frank F. Sharon then testified that he was a Post Office Inspector and than gave testimony as to his attempt to find Mary Ann Hudson and his attempt to find the original deposition referred to in the testimony of Kimpton Ellis. As the original deposition was subsequently found that testimony is omitted.

TESTIMONY OF O. F. WILSON FOR THE UNITED STATES.

O. F. WILSON

produced as a witness on behalf of the United States, having been duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Armstrong.)

In the early part of 1927 I purchased some land in Cimarron County, Oklahoma. Prior to making the purchase I first talked to Mr. Brubaker. I think it was in the latter week of April, 1927, at my place of business, 5901 Santa Monica Boulevard. Mr. Brubaker said it was a case of selling me some land that was in an agricultural district that was supposed to be oil bearing and so forth. He was selling me oil land. It was then under a state of cultivation and was going to be developed—drilled and developed for oil. I understood that J. W. Alford was to do the drilling right soon. I think Mr. Brubaker produced a letter which stated that Mr. Alford had purchased the land. I do not remember how many acres I purchased nor how much I contracted to pay nor

(Testimony of O. F. Wilson)

how much I did pay. I made two purchases, the second one from Mr. Henderson. I bought three acres all together. What Mr. Henderson told me was about a duplicate of what Mr. Brubaker said. I paid $100 an acre and contracted to pay $300 all together. I paid in all $140. I made my last payment in the latter part of May and the date of the first purchase was the last week in April.

Cross-Examination

(By Mr. Friedman.)

I contracted to buy three acres in all. As to the first two my negotiations were with Mr. Brubaker and as to the third acre they were with O. B. Henderson. My contracts called for a total payment of $300 of which I only paid $140.

(The jury were then excused for a few minutes and the following proceedings were had out of the presence of the jury:—)

A discussion then occurred as to the admissibility of the carbon copy of the letter purported to have been mailed to Mr. Davis. Mr. Friedman for the defendant objected on the ground that the proper foundation had not been laid in that it had not been satisfactorily shown what became of the original of the letter, and that the foundation had not properly been laid for the admission of such secondary evidence.

Exception No. 21.

THE COURT: I cannot agree with you. I will overrule the objection. You will note an exception and it may be noted as though the jury were present.

(The carbon copy of the Davis letter was admitted in evidence and marked Government's Exhibit 16.)

(Testimony of O. F. Wilson)

(The jury then returned to the jury box.)

It was thereupon stipulated between The United States and the defendant that a document produced from the files of the County clerk of the County of Los Angeles is the original deposition taken in the case of Charles L. Brubaker vs. J. W. Alford and others and that it was the deposition of J. W. Alford duly and regularly taken and signed by Mr. Alford and that either side could read into evidence such portions of the deposition as were material to the issue.

Thereupon Mr. Armstrong read the following portions from the deposition of Mr. Alford as evidence on behalf of the United States:

I will read from page 68, commencing with line 8, as follows:

Q. BY MR. FORREST: Now, who told Brubaker to sell the land described in these several contracts? A—(By Mr. Alford) I did. Q.—You told him? A—Yes."

I will omit from line 13 to line 19.

"A—(By Mr. Alford) He was never told in the presence of anyone to sell that particular land. We had a system of giving out plats of specific acreage for sale and I started to sell on the whole half of that 30,000 acres, embracing some six or seven thousand acres that we had on a contract to purchase, and he was given a plat covering that acreage."

Reading now from page 71 of that same deposition: "Q—Referring to the contracts between yourself and Mr. White, this one dated February 14, 1927, did you pay to Mr. White the 5 per cent provided in that contract?

"A—No.

(Testimony of O. F. Wilson)

"Q—Did you pay to him any moneys as provided in the contract?

"A—No. The moneys were used as stated in that contract."

Reading from page 77, line 12: "Q—Well, how much —strike that—Did you sell any of the land that I have described here in which Mr. White was concerned? A—Yes. Q—How much of that did you sell? A—Well, I think there was possibly 30 or 40 acres sold all told, or contracted to be sold."

Reading from page 78, line 3: "MR. HARRIS: Then, the question, as I understand it, refers only to the land which Mr. White held a deed to? MR. FORREST: Yes. MR. HARRIS: Alford, do you understand that question? A—BY MR. ALFORD: I understood the question all right. Under my contract with Mr. White that was our land. Q BY MR. FORREST: Well, any way that you care to put it. You mean how much land did I sell that was covered by the deed in Mr. White's possession? Q—You know what I mean. A—Approximately 40 acres of that land that we held the deed for. Q—Approximately 40 acres? A—Yes, between 30 and 40 acres. Q—Well, how much land was sold altogether, including 40 acres? A—Around 600 acres. Q—Around 600 acres? A—Yes. Q—Then, 560 acres were sold in the other lands? A—Yes, sir."

Thereupon an adjournment was taken until July 25, 1929, at 9:30 o'clock in the morning at which time the trial was resumed and the following proceedings had:

(Testimony of John R. Gordon)

TESTIMONY OF JOHN R. GORDON.

JOHN R. GORDON,

recalled as a witness on behalf of the Government, testified in substance as follows:

Further Direct Examination.

(By Mr. Armstrong.)

Relative to Government's Exhibit 33 and the envelope attached to the letter, I am now able to state that the letter was received in that envelope.

In reply to queries by the Court the witness testified as follows:

Mr. Alford telephone to me a few days after I received this letter. I had written him asking him to send what he said he was going to send me in the letter; and instead of sending it he called me up over the telephone and asked me to come down and get it. This letter is dated January 19, 1928. I wrote him a letter about three or four days after that asking him to mail the certificates I had paid for, which were pertained to in that letter. Instead of mailing them to me, he called me up and wanted me to come down and talk to him, and I told him he had got my money through the mail and he could send me my certificates back to me through the mail. He them became very abusive to me, and that is all I heard from him. He didn't write me any more letters after that. After that I did not go to his office at all.

Cross Examination.

(By Mr. Friedman.)

At the time I received this letter I had fully paid up my contracts—months ago; or a few months ahead of it, and I never received anything for my money at all. This let-

(Testimony of John R. Gordon)

ter was written probably a couple of months or so after my payments had been made. I had written him a number of letters and never got any reply. This is the first reply I received to a number of letters I had written him, asking him for something for the money I had paid him.

MR. ARMSTRONG: I ask this letter be admitted in evidence.

EXCEPTION NO. 22

MR. FRIEDMAN: I understand that our objection is in as to the admission of that letter.

THE COURT: Yes, it may be noted now on all the grounds heretofore stated.

MR. FRIEDMAN: And may we have an exception?

THE COURT: Yes.

(The letter was then admitted in evidence, marked Government's Exhibit 33, the original of which is before this Court by Stipulation and Order.)

EXCEPTION NO. 23

MR. ARMSTRONG: At this time, if your Honor please, I also offer in evidence Government's Exhibit 35 in support of Count 5 of the indictment.

MR. FRIEDMAN: What is Government's Exhibit 35?

MR. ARMSTRONG: That is the letter addressed to Edith Skoog.

MR. FRIEDMAN: Of course, we interpose the same objection to that as to the last letter offered by the Government (Exhibit 33), on the ground it is incompetent, irrelevant and immaterial and on the ground it is too remote in point of time. There is no showing at all that that letter has anything to do with any alleged plan or scheme as set forth in the indictment.

(Testimony of John R. Gordon)

THE COURT: The objection is overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit 35 for identification admitted in evidence and marked Government's Exhibit 35, the original of which is before this Court by Stipulation and Order.)

MR. ARMSTRONG: That is the Government's case, your Honor.

THE COURT: The Government rests?

MR. ARMSTRONG: The Government rests.

EXCEPTION NO. 24

MR. FRIEDMAN: First, if your Honor please, I will state that this is a mere preliminary motion for the purpose of protecting my record, because I doubt whether your Honor will change your ruling on that point. I desire to move to strike from the record that Government's exhibit which consists of a letter addressed to Bessie McCluggage, and which is set forth in the first count of the indictment. I move to strike that from the testimony and ask that the jury be instructed to disregard it at the proper time, for all the reasons I urged against its admission in evidence, and I re-urge those reasons now on the motion to strike, in view of the fact that the testimony being concluded, the court may have admitted it at that time with some idea that it would be connected up. I now re-make those motions, and restate those objections, on the ground that all the testimony being in, first there is no proof of the mailing within the jurisdiction of the court; secondly, the foundation has not been laid, showing that the defendant authorized the mailing or mailed that particular letter; and, thirdly, it is apparent the letter was

(Testimony of John R. Gordon)

mailed after any purported scheme, as adduced by the evidence, had been terminated and abandoned.

As to the second count, there was introduced in evidence by the Government a letter dated May 24, 1927, addressed to Charles E. Hood, which letter is the letter set forth in the second count of the indictment. Now, I move the court at this time that that letter be stricken from the record, from the testimony, from the evidence, upon all the grounds urged as to the striking of the McCluggage letter. In the third count there is the letter of Mr.—well, the third count has been abadoned.

MR. ARMSTRONG: That has been withdrawn.

MR. FRIEDMAN: That has been withdrawn.

The fourth count is the letter—

MR. ARMSTRONG: The fourth count has been withdrawn, also.

MR. FRIEDMAN: The fourth count also was withdrawn. The fifth count is the letter addressed to Miss Skoog, which your Honor just intimated as to how you would pass on it. And I move that letter be stricken from the record, on all the grounds urged for the letter written to Bessie McCluggage, and on the further ground it is too remote in point of time, bearing the date of January 12, 1928. It is apparent from its face and from the testimony that it was written long after the consummation or abandonment of any purported schemes formulated by the defendant. Furthermore, the foundation for that letter has not been laid, and there is no proof that it was ever written by or authorized to be written by the defendant in this case, or that the defendant in this case mailed

(Testimony of John R. Gordon)

or caused said letter to be mailed; or, if he did, that it was mailed within the jurisdiction of this court.

I will ask that as to the last count in the indictment, which is the letter addressed to Mr. John R. Gordon, dated January 19, 1928, the letter be stricken from the record upon all the grounds as to the striking of the letter contained in the first count.

THE COURT: The several motions are overruled.

MR. FRIEDMAN: And my exception will be noted to your Honor's ruling?

THE COURT: Yes.

EXCEPTION NO. 25

MR. FRIEDMAN: That being so, at this time, and likewise in further pursuance of our understanding, I move the court now, at the close of the Government's case in chief, on their resting, on behalf of the defendant in this case, that the court instruct and direct the jury to find and return a verdict finding the defendant not guilty upon all the remaining counts in the indictment, which I understand are counts 1, 2, 5 and 6. Is that right?

MR. ARMSTRONG: Yes.

MR. FRIEDMAN: I so move upon the following grounds, to-wit:

1. That the evidence introduced by the Government is insufficient to support either a verdict or a judgment of guilty, if such verdict or judgment were found, given or made or rendered against said defendant on any of said counts.

2. That no offense sought to be charged in the indictment here, or any count thereof, has been proved by the Government.

(Testimony of John R. Gordon)

3. That the evidence so adduced fails and is insufficient to prove the plan, scheme or artifice set forth in said indictment, or in any count thereof.

4. That the evidence so adduced fails and is insufficient to prove the plan, scheme or artifice as specified in the bill of particulars furnished by the Government, or as declared by the Government and as set forth in the minute order of Judge James allowing or granting in part defendant's motion for a bill of particulars.

5. That the evidence so adduced by the Government does not exclude every other hypothesis except that of guilt on the part of the defendant, and is as consistent with his innocence as it is with his guilt.

6. That the evidence so adduced by the Government fails to establish the falsity of any representations alleged to have been made by defendant or that defendant knew said representations were false or that any promises or representations made by him as to future events or happenings or conditions to be by him performed were so made with the intent not to perform the same on the part of the defendant.

7. That the evidence so adduced by the Government fails and is insufficient to prove an intent to defraud on the part of the defendant.

8. That the evidence so adduced by the Government fails and is insufficient to prove that the letters set forth in said indictment, or in any count thereof, were mailed within the jurisdiction of this court.

9. That the evidence so adduced by the Government fails and is insufficient to prove that the letters set forth in the indictment, or in any count thereof, were mailed for

(Testimony of John R. Gordon)

the purpose of executing or attempting to execute or in furtherance of the alleged plan, scheme or artifice as set forth in the indictment.

10. That the evidence so adduced by the Government establishes that each letter set forth in each count of the indictment was mailed after any alleged plan, scheme or artifice on the part of the defendant had been terminated and abandoned.

11. That there is a fatal and material variance between the allegations of the indictment and the allegations of each of the counts thereof and the evidence and proofs adduced by the Government.

(The foregoing motion was then argued by Mr. Friedman.)

THE COURT: As I read the indictment, I think the allegations with reference to the Ten-Way-To-Win-Syndicate are merely elements of the scheme set forth in the indictment. And, as stated in the Mathews case, to which reference has been made, a scheme may be made up of many elements. If so, it is necessary to prove a sufficient number of them so that the jury may be justified in finding the existence of the scheme, but no particular element need be proved if other elements proved are sufficient to establish the scheme.

I will overrule the motions.

To which ruling of the Court the defendant duly and regularly took and noted an exception.

(Testimony of Chandler Peirce)

TESTIMONY OF CHANDLER PEIRCE, FOR THE DEFENDANT.

CHANDLER PEIRCE,

Called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 917 Francisco Street, Los Angeles. During the year 1927 I was in the employ of Mr. Alford, the defendant. Relative to the sale of lands situated in Cimarron County, Oklahoma, I think I was in his employ a few months. At or about the time I entered into my employment with Mr. Alford, the nature of the proposition was explained to me by Mr. Alford, Mr. Jackson and several instructors of Mr. Alford in the morning meetings. I attended every one of the morning meetings of the salesmen. I never, at any of these morning meetings, heard Mr. Alford or Mr. Jackson or anyone else say to the salesmen there that Mr. Alford of the J. W. Alford Company was then drilling wells on this land in Oklahoma. There was nothing said at the morning meetings about the drilling of wells on the land. This land was being sold as potential oil land, without any oil wells on it. That is what was said at the meetings and what I was told. I was never told by Mr. Alford or Mr. Jackson under what conditions Mr. Alford was acquiring this land, nor did I hear any statements to that effect at any of the salesmen's meetings. I was given no sales literature except maps. I haven't the maps now and don't know where they are.

(Testimony of Chandler Peirce)

Q. One more question, Mr. Peirce: In any of your talks with any of the persons to whom you sold land or to whom you attempted to sell this land in Cimarron County, Oklahoma, did you ever at any time state to any of these people that the Alford Company was then drilling wells upon the land?

A. I never did.

Q. And with reference to the general instructions that you received, either from Mr. Alford or from Mr. Jackson, Mr. Peirce, was there anything said about your selling this land strictly on its merits, and that no misrepresentations should be made in the sale of it?

A. They did not tell my anything about that.

Cross Examination.

(By Mr. Armstrong.)

I remember what I told Mr. Hood when I sold him the land. I told him I thought it was fine potential oil land and had wonderful possibilities and he had to get in ahead of the drilling, because if they drilled somewhere near there and got oil, it would be one thousand or two thousand dollars. I said "Today is the day to buy it," and he did. I had just one map, I think, and it showed all the acreage, and it showed all the other wells that were drilling nearby, by the Sinclair people and the Ramsey and other people which I can't remember now. I cannot remember now how close the Ramsey well was. I bought an acre myself and got out when I heard that the Ramsey well was a fluke, and that there wasn't going to be oil there. I do not remember of having a sales kit. I recall Government's Exhibit 25. It was given me at Mr. Alford's office. I told the people I sold to that upon com-

(Testimony of B. H. Kroeger.)

pleting their payments they would get a deed to the land, and I so believed, because Mr. Alford had it for sale. I don't know whether I thought he owned the land. I supposed he controlled it. You know, you can buy land on time and sell it. I didn't know what he was doing; it was none of my affairs.

TESTIMONY OF B. H. KROEGER, FOR THE DEFENDANT.

B. H. KROEGER,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 792½ East Kensington Road, Los Angeles. I know Mr. Alford, and was in his employ in the early part of 1927, somewhere in February or March. I was employed by him at the time land in Cimarron County, Oklahoma, was being sold, as a salesman. I sold to about half a dozen people. I sold to Ellen O. Hancock. At the time I sold to Miss Hancock I told her that we had potential oil wells for sale, and if she wanted to get in on a good deal, to make some money, to buy some land. I didn't say anything about drilling, because we were not drilling to my knowledge. I knew that we were not drilling, and I got the information that there was no drilling on this land at that time in the office from several people there, from the instructors and from Mr. Jackson. It was told in the salesmen's class, and I heard that stated at the salesmen's classes on more than one occasion. I never

(Testimony of B. H. Kroeger)

heard anything about the conditions under which Mr. Alford was acquiring this land. I knew Mr. C. L. Brubaker. He was one of the salesmen for Mr. Alford when I was there, and I very often saw him at the salesmen's meetings, and I saw him at some of the salesmen's meetings when it was stated to the salesmen that there was no drilling being done on this land in Oklahoma, and I saw him on more than one occasion when that was said. After I left the employ of Mr. Alford I had a conversation with Mr. Brubaker in a cafeteria in Los Angeles. There was no one else present.

Q. Just state what said by Mr. Brubaker in that conversation.

A. Well, he opened up the conversation and said, "Do you know that Alford is in trouble?" I said, "I don't know anything about it."

THE COURT: "Do you know that Alford is in trouble?"

A. Yes, and I was going on eating, and kept listening to his remarks and he said, "Well, you know, you sold the land, and everybody sold the land, as far as the misrepresentations." I say, "How do you get that?" "Well, he never could deliver the title," and he said to me that he is getting his share. I said, "What do you mean by that?" "Well," he said, "if he gets in jail." And he tried to say, "Well, you had better take care of your clients' interests and do the same thing and get on my side." And I said—well, it sounded to me as if he had—

MR. ARMSTRONG: Just a moment.

THE COURT: You need not give your opinion.

MR. FRIEDMAN: Just what he said.

(Testimony of Brooks E. Miller)

THE COURT: He is just asking for the conversation.

A. Well, and then he said, "You had better take care of your clients' interests and do the same thing," and he hinted, "Well, if you don't do it, I will see that you get in jail, too, and I will send you to a hot place." That is what he did say.

Cross Examination.

(By Mr. Armstrong.)

The lecturer—the person who was doing the lecturing to the salesmen at these meetings said, "We are going to drill," as far as I can remember, some time in the future. They told me to represent to my clients that we were going to drill some time in the future.

TESTIMONY OF BROOKS E. MILLER, FOR THE DEFENDANT.

BROOKS E. MILLER,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside in Mar Vista. I know Mr. Alford, the defendant, and was employed by him as a salesman for the sale of land in Cimarron County, Oklahoma, about March 1, 1927, and acted as such salesmen about six or seven weeks. On March 6, 1927 I saw this land in Oklahoma and made an inspection of it and the surrounding and adjacent lands. At the time I was there, drilling for oil was being done on the surrounding lands, but there was no drilling being done on the land defendant was selling. I sold this land to 24 people, among them being Mrs. G. R. McNeill of San Diego, and Paul Doring. In the case of all the people I sold this land to, I never at any time stated to any of them or to any other prospects that I may have

(Testimony of Brooks E. Miller)

approached, that Mr. Alford or the Alford Company or anyone else was then drilling upon this land that was being sold in Oklahoma. I knew there were no drilling operations going on there. I attended some of the salemen's meetings at Mr. Alford's office. At these meetings there were never any statements made to the effect that drilling was them going on upon this land. Statements were made at these meetings that they were not drilling. I know C. L. Brubaker, and he attended about every one of these salesmen's meetings that I did, and I saw him at some of the sales meetings where it was stated that the Alford Company was not drilling. At the time I first started selling this land I had been told by Mr. Alford on the 17th day of January, 1927 in Amarillo, Texas, under what conditions he was acquiring this land. He then told me he had been chasing over Oklahoma with Mr. Slack, from Boise City to Oklahoma City, visiting with Slack's partners; and that he had tied up this 30,000 acre block of land and was going to put on a campaign to sell it as potential oil-bearing land. He asked me to join him, and I told him I was busy and couldn't do it. About the 20th of February I came here to Burbank and went in to see him. He had about 75 salesmen and his sales force and everybody was full of pep, and the deal was going good. The Ramsey well had its flare in the newspapers. The Ramsey well came in on either the 18th or 19th day of February, 1927. I was in Amarillo, Texas, at the time. I visited Boise City, Oklahoma, shortly after the Ramsey well came in. The general conditions there at that time with reference to oil and oil development were that everybody had gone crazy.

Cross Examination

(By Mr. Armstrong.)

I was in Amarillo when the Ramsey well came in, but I wasn't on the site of the Ramsey well. I was within 75

(Testimony of Peter Joseph Deaux)

miles of it and saw it in the papers. I read of it in the papers every day. I was very much interested in it. I have known Mr. Alford about five or six years as a salesman and as a friend. At the time I was in Boise City it had a very floating population. One day it would be eight hundred and the next day it would be five thousand. With respect to the people who lived there regularly, I guess there were about from eight hundred to a thousand people. The Ramsey well was about eight or ten miles from the property optioned by Mr. Alford, and this property was about seven miles from the town of Boise City. I had been told that there was no drilling on this particular land, and was told to tell my prospective clients that there was no drilling on the Alford land. Statements were made that if they sold enough acres to pay the cost, that wells were going to be drilled on this land. This was told my by Mr. Alford, and also told to the other representatives, and I was so instructed to tell my clients, and I did so tell my clients.

TESTIMONY OF PETER JOSEPH DEAUX, FOR THE DEFENDANT.

PETER JOSEPH DEAUX,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at Reseda, California. During the year 1927 I agreed to purchase some land through J. W. Alford or the J. W. Alford Company in Cimarron County, Ok-

(Testimony of Harry Moxness)

lahoma. I dealt with Mr. Jackson. I paid $40 on my contract. This $40 was refunded to me by Mr. Alford. As I remember, when my next payment was due, I was unable to pay any more, and I called Mr. Jackson on the telephone and he told me that as long as I couldn't go ahead with my contract or didn't feel that I could go ahead with it, that he would refund me my money, and my money was returned to me promptly.

Cross Examination

(By Mr. Armstrong.)

That was in the early spring of 1927, as I remember, and the amount was $40. I gave them a check and they returned my check.

TESTIMONY OF HARRY MOXNESS, FOR THE DEFENDANT.

HARRY MOXNESS,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Friedman.)

I reside at 807 South Westlake Avenue. I was in the employ of Mr. Alford during the year 1927 as a salesman, selling this acreage in Cimarron County, Oklahoma. I was so in his employ about two months. I sold to 14 people, among them being Ada McKean. In none of my talks with any of the people to whom I sold or signed up for the sale of any of this land, or any of the people that I was attempting to sell this land to, did I at any time state or represent that J. W. Alford or the Alford Com-

(Testimony of Harry Moxness)

pany or anyone else was then drilling wells upon this land. During the time I was selling or attempting to sell this property, I knew and had been told that wells were not being drilled on the land. I had been so told by Mr. Jackson and Mr. Broadhead and Mr. Hudson. I attended every one of the salesmen's meetings held in Mr. Alford's office. I saw Mr. Bradley and Mr. Brubaker at these meetings. At some of these sales meetings I heard it stated to the salesmen there that no wells were then being drilled upon the land, and I saw Mr. Brubaker and Mr. Bradley at such meetings when such a statement was made, and this occured on more than one occasion, very often. I knew Mr. Brubaker during that period of time. He was also a salesman.

Q. Now, I will ask you whether or not, Mr. Moxness, on or about the 21st day of August, in the city and county of Los Angeles, you had a conversation with Mr. Brubaker.

A. I did.

Q. (Continuing) In which Mr. Brubaker told you that he had plenty on Mr. Alford and that he was going to get Mr. Alford ten or twenty years in jail?

MR. ARMSTRONG: That is objected to as immaterial.

THE COURT: That was asked the witness Brubaker.

MR. ARMSTRONG: Yes, that is true, but I do not see the materiality of it, your Honor.

THE COURT: Merely supporting his claim.

A. He did.

(Testimony of Harry Moxness)

BY MR. FRIEDMAN:

Q. I will ask you if at the same time and place stated in my last question, whether Mr. Brubaker stated to you at that time, or requested you at that time to sign a criminal complaint against Mr. Alford.

A. He did.

Q. I will ask you whether or not at the time and place mentioned in my last question you refused to sign such a complaint.

A. Yes, sir.

Q. And I will ask you whether or not at the time you so refused to sign such complaint, was Mrs. Moxness present?

A. She was.

Q. Did Mr. Brubaker at that time ask Mrs. Moxness to persuade you to sign such a complaint?

A. He did.

Q. I will ask you whether or not at the same time and place designated in my previous questions, Mr. Brubaker told you that he had talked to several of his clients relative to having them sign criminal complaints against Mr. Alford.

A. He did.

Q. I will ask you whether or not, at that time and place, Mr. Brubaker asked you to meet him at the District Attorney's office the next day?

A. Yes, he did.

Q. And did you go to the District Attorney's office the next day?

A. Yes, sir.

(Testimony of Harry Moxness)

Q. And did Mr. Brubaker, in the District Attorney's office, in this city and county, on the day following the conversation you have just related, again ask you to sign a criminal complaint against Mr. Alford?

A. He did.

Q. And did you refuse at that time?

A. Absolutely.

Q. Now I will ask you whether or not in the District Attorney's office, at the time and place I have specified in my questions, and upon your refusal to sign the criminal complaint upon the request of Mr. Brubaker, Mr. Brubaker told you and Mrs. Moxness at that time that you were a lot of damned fools, and that he, Brubaker, had spent his time and his money to get this criminal complaint against Mr. Alford, and that if you did not sign the criminal complaint, that some action might be taken against you?

A. He told me that—he told me at—

MR. ARMSTRONG: Just a moment. That is objected to. The question, as framed, should be answered yes or no.

THE COURT: You may answer yes or no.

BY MR. FRIEDMAN: Q. Isn't it a fact—or I will ask you whether it is a fact that at the District Attorney's office, at the times and places that I have designated in my last two questions, Mr. Brubaker told Mrs. Moxness, in your presence, that if you did not get the people you had sold land to in the Alford proposition to sign complaints against Mr. Alford, that you would get into prison yourself?

(Testimony of Harry Moxness)

A. Pardon me. Was that at the District Attorney's office, did you say?

Q. Yes.

A. No, Mrs. Moxness was not there.

MR. ARMSTRONG: Just a moment. The answer should be yes or no. What is the answer?

(Answer read by the reporter.)

THE WITNESS: The question, please?

(Question read by the reporter.)

A. No, not in the District Attorney's office.

At the time I was engaged in selling this land in Oklahoma, I was told by Mr. Jackson and Mr. Broadhead, and later by Mr. Alford himself as to the conditions under which Mr. Alford was purchasing this land. I was told by Mr. Broadhead that it was bought on a purchase contract; that Mr. Alford took an option on it, and that we were selling it, and that Mr. Alford had paid for 1680 acres. Mr. Jackson and Mr. Alford, also, told me that, and I heard this matter mentioned at the salesmen's meetings at which Mr. Brubaker, Mr. Broadhead and Mr. Bradley were present. I attended some salesmen's meetings at which Mr. Brubaker was, where it was stated that this land the salesmen were selling was to be purchased by Mr. Alford under an option contract, and the same statement was made at the meeting at which Mr. Bradley was and Mr. Broadhead. I was given and read the literature to be used in making my sales. I was never given any literature which contained any statement to the effect that J. W. Alford or the Alford Company was then drilling wells on the land in Oklahoma. I was never given any literature which contained any statements to

(Testimony of Ernest De Valyea)

the effect that Mr. Alford or the Alford Company was then expending $300,000 in the drilling of wells in Oklahoma. I never made any such statements to any of my purchasers or my prospective purchasers.

CrossExamination.

(By Mr. Armstrong.)

I did represent to my clients that either Mr. Alford or Alford & Company expected to drill wells on this land. I did not tell them how soon the wells were to be drilled. There was no specified time. I was so told at the salesmen's meetings, and was authorized to make such a representation. At some of these salesmen's meetings it was stated that three wells were to be drilled if necessary. It was stated at some of these salesmen's meetings that Mr. Alford was buying the land on a purchase contract and that he had paid for 1,680 acres, and that we were selling the land which was included in the 1,680 acres.

TESTIMONY OF ERNEST DE VALYEA, FOR THE DEFENDANT.

ERNEST DE VALYEA,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I live at 725 Lucille, Los Angeles. I was employed from about the 15th of January to about May, 1927 as a salesman by Mr. Alford in the sale of lands situated in Cimarron County, Oklahoma. I actually sold to three people. I sold nine acres. Prior to making these sales,

(Testimony of Ernest De Valyea)

I was never told by Mr. Alford or Mr. Jackson or any one else as to whether any wells were being drilled on these lands by Mr. Alford. The only thing was that I was told that if the company would have money enough and if this Ramsey well was drilling, and the Sinclair to the west of this property, that we would drill, too, because it would pay. There was no statement that any wells were being drilled at that time. I never stated to any of my prospective purchasers that any wells were then being drilled on the land. I never used or received any literature to be used in my sales. I just told my friends whom I sold it to that I thought it was a good gamble. I knew Mr. Broadhead. I met him at meetings. He was salesmanager. I never heard him make any statements as to whether any wells were being drilled or not. I attended the salesmen's meetings many times.

Q. Did you ever hear Mr. Broadhead make any statements at those meetings as to how much of this land Mr. Alford owned?

A. I never heard any details. I heard once that either Hudson or Broadhead made a statement that Mr. Alford bought this land outright. Of course I know it is not true. So I went in to Mr. Alford's room and called his attention to this, so to say, lie; and he got very sore and he came out to the meeting and himself held a speech in which he explained to every salesman present that this land was bought on a purchasing contract.

Q. Mr. Alford came out to the meeting and personally told them that?

A. Right away when I called this lie to his attention—maybe it was a slip of the tongue—it may not have been

(Testimony of Sonia West)

intentional at all—but Mr. Alford got very sore about it, and he said he didn't want them in any wise told that, because it was not true; and he wanted it explained to everyone that bought this land that he was buying it on a purchasing contract only, and not outright.

Q. You knew that before the meeting, did you not?

A. Yes.

Q. And who told you that originally?

A. Mr. Alford himself.

Cross Examination.

(By Mr. Armstrong.)

At these meetings I understood Mr. Alford had a contract on account of which he had a right to buy so much at a time and pay it off. I never knew whether Mr. Alford had purchased any of this land or not. I never cared about that, because I knew he had a contract to buy this land. I never paid much attention to the terms. I never said anything to the people I sold about that. They didn't ask me and I didn't tell them.

TESTIMONY OF SONIA WEST, FOR THE DEFENDANT.

SONIA WEST,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 672 South Rampart. During the year 1927 I acted as saleswoman for the sale of the land Mr. Alford was selling in Oklahoma. I think entered upon my

(Testimony of Sonia West)

duties in February. It was when Mr. Alford first started out. I received my information as to what the proposition was from a sales meeting, from Mr. Hudson, and Mr. Alford at other times, and Mr. Broadhead. My information came from what was said at the sales meetings, almost all of which I attended. I saw Mr. Brubaker and Mr. Cameron Bradley at some of the sales meetings, and also Mr. Broadhead.

Q. What were you and the other sales people told at these meetings relative to whether any oil wells were being drilled upon the land?

A. Not at that time, no. What I understood was—what I was told was that this was land with oil possibilities, and that there were other companies drilling around there; not on our property; and that if the Ramsey well proved a big success, and if the other companies drilling discovered oil, that we would also drill. And in the event we did not drill, that that land would be very valuable, anyhow, because of its proximity to the land that did produce near the Ramsey well.

Q. So it was stated, as I understand, Mrs. West, at these salesmen's meetings that neither Mr. Alford nor the Alford Company were then drilling upon this land?

A. Not then. They were going to drill.

Q. Was anything said at these meetings you attended relative to the conditions under which Mr. Alford had acquired this land?

A. Yes, I understood that he had paid a certain amount and that—wait—he was only selling the land that he actually owned; and that he had the option to buy any or all of the other land. I don't know just when those

(Testimony of Sonia West)

other payments were to be made. I didn't go into that. I procured the contract from Dolores Bingham. I never in speaking to any of the people who purchased from me, or whom I sought for the purpose of having them purchase this land, stated to any of them that Mr. Alford was drilling on the land.

Cross Examination.

(By Mr. Armstrong.)

I was with Mr. Alford about the latter part of February or the first part of March. All that was said was that they would drill and stud in a well. I learned during the latter part of February or the first part of March that the Ramsey well had come in. I saw it in the paper. In several papers I had seen it. After that it was said that Alford & Company were going to drill. That they were going to. Not only because the Ramsey well had come in but because other companies were drilling in the vicinity, which would make the land valuable. At these meetings the representation was made that we were only selling the land that Mr. Alford owned, certain tracts that Mr. Alford had actually paid for. The land I was selling I understood Mr. Alford owned, and I so represented to my clients.

Redirect Examination.

(By Mr. Friedman.)

I think the tract I was selling in was 23, or 32, I am not sure.

In reply to questions by the Court the witness testified as follows:

I sold to Mr. Dixtra and to Dolores Bingham, and I sold to myself. I can't remember the other people. I

(Testimony of George Davis)

don't recall whether the land I sold to Miss Bingham was in sections 32 and 33 or not. It was in the same section I bought in. I think Mr. Alford engaged me. I knew in which section I was authorized to sell, because we were given little plats with certain sections on them. I think Mr. Jackson gave me those. Perhaps one of the assistants did. I don't recall really who did, but I think Mr. Alford or Mr. Jackson did. They gave me a map. I have not got the map. I think we turned them in with the literature. I only carried the map of that tract. I never carried a lot of excess literature.

(Questions by Mr. Friedman.)

I had two separate tracts. I sold in more than one section. Government's Exhibit 72 which you show me contains my signature. I *I* wrote in the sections, townships and ranges in those exhibits, and they were in conformity with the plats that had been given to me to use in selling. The statements that we were only selling the land that Mr. Alford owned were made in the sales meetings.

TESTIMONY OF GEORGE DAVIS, FOR THE DEFENDANT.

GEORGE DAVIS,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 6441 Church Street, Los Angeles. During the year 1927 I was employed as one of the salesmen of

(Testimony of George Davis)

Mr. Alford's organization for the purpose of selling land in Cimarron County, Oklahoma. I first assumed such duties in the latter part of February or the first of March. Prior to assuming my duties, I had a conversation with the sales manager and also with Mr. Alford, relative to the nature of the proposition. The conversation I had with Mr. Alford occurred in his offices. He told me he had taken an option on a large body of potential oil land and had acquired title to a part of it. That there were wells being drilled around it in formation that was supposed to be production. That he expected to sell a part of this land to which he had title, and eventually, when funds were sufficient, drill an oil well; and eventually drill another one, and possibly three. I am not just sure exactly what his words were. Mr. Alford told me at that time they were not then drilling. In none of the sales that I made, or any of the persons that I approached for the purpose of making sales, did I ever represent to any of them that wells were being drilled upon this land.

Cross Examination.

(By Mr. Armstrong.)

That was not the only time I heard this plan discussed. I heard it discussed at salesmen's meetings. I understood that Mr. Alford could give title to a certain portion of the land. My understanding was that the title was vested in a way that he could give title to it. I did not go into the detail of it. I represented to my clients that when their payments were completed, Mr. Alford would give them a deed to the land which they purchased. I am not sure as to the exact amount, but I understood that at that time Mr. Alford was in a position to give title to about

(Testimony of W. E. Gale)

1600 acres. I understood I was selling land to which he could give title. I had my conversation with him about February or March, I think. He did not say how far away the wells were that were being drilled around this land. The Ramsey well was supposed to be the closest. I am not sure as to the exact distance, but it was about five or six miles away. I told my clients that we were selling acreage, because we had potential oil land that we thought had a good value, and that with potential oil lands with wells being drilled close, we couldn't tell what the value was. Sometimes they were very valuable, and sometimes not so much, and that when we raised enough money from the sale of these acres we would start to drill a well. I did not tell them there was a condition in the contract by which Mr. Alford was purchasing the land, that required him within a reasonable time to spend $300,000 in drilling wells.

TESTIMONY OF W. E. GALE, FOR THE DEFENDANT.

W. E. GALE,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 1232 Pointview Street, Los Angeles. During the year 1927 I was employed by Mr. Alford in the sale of lands situated in Cimarron County, Oklahoma, and in that capacity I procured the contract from Mrs. Gardiner. I did not, during any of the conversations I

(Testimony of W. E. Gale)

had with Mrs. Gardiner relative to her buying this land, tell her at any time that Mr. Alford or the Alford Company were then drilling a well upon this land. I told her that it was potential oil property, and that in the event we did not get oil, or there was no well drilled, that she would at least have the land. I told her that it was Mr. Alford's intention, in the future, to drill wells there. I also procured a contract of sales from Mrs. Nora Dickerson. I never made any statements to Mrs. Dickerson to the effect that wells were then being drilled upon the land. I had been told there were no wells being drilled upon the land, and was so told at the sales meetings by more than one person. I think both Mr. Jackson and Mr. Alford made such statements, and at such meetings I saw Mr. Brubaker.

Cross Examination.

(By Mr. Armstrong.)

It was stated at these sales meetings that provided the wells that were being drilled in this territory, but not on our land, should come in, then was when we were proposing to drill. I believe the Ramsey well came in while I was with Alford & Company. I believe it was announced in the different papers that it had come in. This was just shortly before I left. I made no statement to Mrs. Gardner or anybody else that we were drilling on this land of Mr. Alford's.

Q. Did you make this statement to her: "He said that Mr. Alford had several thousand acres down there and they were selling them in five and ten acre lots and they were drilling within—well, I couldn't say just how close."

(Testimony of C. F. Ruprecht)

A. The "they" didn't refer to Alford & Company.

The Ramsey was the only one I referred to. If I referred to any others, I don't recall it now. I suppose it was mentioned in the sales meetings how far the Ramsey well was from this property, but I don't recall how far it was now. I would imagine it was eight or ten miles. I never told my buyers anything about a town site.

TESTIMONY OF C. F. RUPRECHT, FOR THE DEFENDANT.

C. F. RUPRECHT,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Friedman.)

I reside at 1669 Arlington Avenue, Los Angeles. During the year 1927 I was engaged for a short time as a salesman for Mr. Alford, in the sale of lands in Cimarron County, Oklahoma. Prior or at the time I assumed my duties as such salesman, I had a conversation with Mr. Alford's sales manager, relative to what the proposition consisted of. It was Mr. Broadhead, I believe. I never had any talk with Mr. Alford about it. The statements made by Mr. Broadhead were during the sales meetings, and I had one conversation with him alone.

Before becoming a member of the selling organization, I bought land there from another salesman employed by the Alford Company, and after purchasing it myself, then I joined the selling organization, and the representations that were made to me at the sales organization meetings

(Testimony of C. D. Jackson)

were the same that were made to me by the salesmen that originally sold it to me, and they were that the company planned to drill three wells, providing test wells in the vicinity turned out to be proven territory. I never made any statement to the contrary while acting as such salesman to any person I may have spoken to for the purpose of selling this land to.

Cross Examination.

(By Mr. Armstrong.)

I first started, I think, in the latter part of February, 1927. I remained a very short time. I think I remained about six weeks. I was told these test wells were quite some distance away. The only well that I recall is the Ramsey well, and they told me that was over ten miles away. If there were any other test wells, my recollectiotn is that they were farther away than that, but I wouldn't say for sure.

TESTIMONY OF C. D. JACKSON, FOR THE DEFENDANT.

C. D. JACKSON,

called as a witness on behalf of the defendant, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Friedman.)

I reside at 120 North Weatherly Drive. I know Mr. Alford, and was connected with him during the time he was placing on the market for sale the land situated in Cimarron County, Oklahoma. I was his assistant. I know Mr. C. L. Brubaker and Mr. Broadhead. Mr.

(Testimony of C. D. Jackson)

Broadhead entered the employ of Mr. Alford before the sales began. He was the sales manager. He hired all the salesmen and gave them their instructions; that is, he conducted all the sales meetings. He was the instructor with Mr. J. B. Hudson, his assistant. Those were his duties. Mr. Broadhead left sometime in March. He was asked to leave. He was fired. The reason he was fired was, first, the salesmen did not like him very well, and in the next place, he was not very competent.

(Mr. Friedman then hands witness Government's Exhibit 15 and asks him to read it, which he does.)

(Witness continuing.) I don't recall ever having seen this document. I did not write it.

(Mr. Friedman hands witness Government's Exhibit 23 and asks him to read it.)

(Witness continuing.) I did not write this. I never made a statement that we were spending $300,000. I never wrote either Government's Exhibit 15 or Government's Exhibit 23. I never before saw either one of these documents. I never saw any documents around the office of Mr. Alford or the Alford Company during the time the Oklahoma land was on the market for sale which stated that we were spending $300,000 for the drilling of wells. I never wrote any documents or any sales literature or any sales talk of any kind that contained in it in substance or effect that the Alford Company or Mr. Alford was expending $300,000 or any other sum for the then drilling of wells on the Oklahoma land.

I have seen Government's Exhibit No. 20, which is a map. I would say I put the writings or markings that are on it in red ink. I wrote on there the writing which

(Testimony of C. D. Jackson)

appears above and below the red arrow and which reads "Panhandle Petroleum Acres. Three wells to be drilled." I believe that map was my own personal map.

In reply to questions of several of the jurors the witness testifies as follows, relative to the map:

The map shows two Ramseys. One was a location and one was a drilling well. The explanation of the map is on the corner there. I think it states the location. The map was prepared by Mr. Alford. The Mercury Oil Derrick that appears on there was on the land itself at the time when the land was being sold. The Magnolia Oil & Gas Company were not drilling; they were leasing. In other words this map shows leases held by the various companies and also the drilling wells and the locations. The Ramsey well and the Philip and the Sinclair wells were being drilled. There is a map that was put out by some firm in Boise City, or some newspaper, and that was part of the salesman's kit which will show you all of that and where this information was taken from. The derrick that appears on the map was put there because Mr. Carter selected a location for the Mercury Oil Company. You could hardly show a location other than show it with a derrick. I do not know how else you would show a location. You always show an oil location with derricks. I have never seen any with just a dot or spot, unless it might be a township map.

(In response to further questions by Mr. Friedman.)

I knew Mr. Alford several years before he procured this contract for the sale of this land. He told me about the terms and conditions under which he was acquiring this land. He told me this in his office and there was no

(Testimony of C. D. Jackson)

one else present. He told me he had an option to purchase 30,000 acres in Cimarron County, Oklahoma, and was making arrangements to put it on the market and wanted to know if I wanted to leave my present position and come over with him and help him put the sale on; and he explained the land to me in detail. He did not show me the option agreement, nor did he show me the terms of the option. I accepted his proposition and came over with him later.

(The Court hands map to witness.)

This map shows the information that was taken from the Panhandle Herald Company, Guymon, Oklahoma. It says "Now drilling. Three derricks". And the number shows the leases held by the various companies. I did not mean that the reason for putting the derrick there to show the location where the Magnolia was drilling was because I had followed that map. The location had not been made on this map then. No location had been made. Just the acreage was located. This is the map that determined the distance from one lease to the other.

(The witness was referring to Exhibit 21 for Identification.)

At the time I had this conversation with Mr. Alford relative to his acquiring a contract for this land, he told me he had divided the tract into a 30,000 acre block and if the Ramsey well was a producer that he planned on drilling a well on Unit No. 1. He had not started to drill at that time. I attended some of the meetings of salesmen held in the office—most of them. Mr. Broadhead conducted those meetings. I addressed these meetings twice. The statement was never made at the sales-

(Testimony of C. D. Jackson)

men's meetings that we were drilling at that time, and the statement was made to the salesmen that there was no drilling going on at that time. The salesmen were told it was Mr. Alford's intention to drill in the future, if the Ramsey well was a producer.

I have seen Defendant's Exhibit I, the order blank signed C. Lee Baker. It was first handed to me by C. L. Brubaker, and at that time he told me he had sold the 10 acres that the contract calls for to a banker friend of his. This order was accompanied by $10 in cash and a check postdated 30 days for $630. Mr. Brubaker told me that the purchaser was tied up on the stock market and he couldn't give a check for $630 at that time, and he wanted to know if I wouldn't hold it for 30 days, which I accepted and did hold it. The day before the check was supposed to be put in Mr. Brubaker came into my office and asked if I would hold the check a few days more, and said that the man had asked him that privilege. And I granted him the privilege. At the end of those few days Mr. Bradley happened to be in my office and he asked me about the check. He knew I had a check for $630. It was my policy to hold the checks on deposit in my desk. And I said, "Yes. You might take this down to the bank and present it." And he did take it to the bank and presented it, and came back and laid the check down on my desk with a notation that there had never been an account in the bank—that there was no such account in the bank with a Mr. C. Lee Baker. Defendant's Exhibit M in evidence is the notation which was pinned to the check, which Mr. Bradley returned to me.

(Testimony of C. F. Ruprecht)

My particular duties at the time these acreages were first placed on the market were to see that everything was furnished properly regarding the sales. Mr. Broadhead and Mr. Hudson gave out the proper information. I was to see that the salesmen were given the proper information, and answer any question they might bring in to me or in to the sales meetings. At the times I addressed the sales meetings I never made any statement as to the conditions under which Mr. Alford was acquiring this land. Mr. Broadhead, Mr. Hudson and Mr. Alford did tell the sales meetings as to the conditions under which the land was being acquired. Mr. Broadhead told them that the land was bought under a contract to purchase, an option, and that it was being bought. They never stated it was owned outright. Nothing was stated about Mr. Alford owning the 1680 acres.

Cross-Examination.

(By Mr. Armstrong.)

The original of the map marked Government's Exhibit 21 for Identification came from the Panhandle Herald Company, Guymon, Oklahoma. I didn't make up the map marked Government's Exhibit 20. I made the markings in red on it. This map here (Exhibit 21) was where Mr. Alford took his information from regarding the acreage owned by the other oil companies. All the salesmen had this map in their kits, but the map used by the salesmen did not have the marking for highways upon it, and there was no circle around township 3, and I do not know who put the circle in the blue there. The words "Mercury Oil Company" did not appear on the salesmen's maps, and I don't know who put that on this map. I

(Testimony of C. D. Jackson)

don't know anything about the Mercury Oil Company. Mr. Alford's company was to be called the J. W. Alford Company. The Mercury Oil Company was a name that went out of existence, if I remember anything about it. I don't remember what Mr. Alford told me about the Mercury Oil Company. I think it was going to be his drilling company. The Mercury Oil Company derrick appearing on this map is printed there under Mr. Alford's authority. He made the map. That map was used by all salesmen and the Mercury Oil Company was carried on all maps, because Mr. Alford printed it there to mark the location of the J. W. Alford Company well. Mr. Alford told me that, but he didn't say it was the Mercury Oil Company that was going to drill. He said it was J. W. Alford. He said that the location shown by the derrick on Government's Exhibit 20 as being the location of the Mercury Oil Company, was where Mr. Alford was going to drill. It was dependent on the Ramsey well coming in as to whether this particular well would be drilled or not. There were other wells drilled around there, and if the territory was proved up, then Mr. Alford would drill three test wells on this property. The drilling of three test wells did not necessarily depend upon the coming in of the Ramsey well. The Ramsey well was between eight and ten miles from Mr. Alford's property. There is one well better than 18 miles away, and that is the closest one next to the Ramsey well. The salesmen were instructed to tell their clients that if the territory was proven—the Ramsey people as well as others were drilling—then Mr. Alford would drill three test wells. I never read the option under which Mr. Alford

(Testimony of C. D. Jackson)

was purchasing this property and I do not know what his monthly payments were. I never read the option. After the paper came out with the article referring to the option of Mr. Alford, Mr. Alford said just what the article did, that he owned 1080 acres of this land outright. He told the salesmen that. We were selling all of Unit No. 1, which took in considerably more than 1080 acres. That was a known fact. I don't think Mr. Alford ever gave the salesmen the impression that the only land he was selling was the land he actually owned. Neither Mr. Alford nor anyone else told me to have the salesmen represent that Mr. Alford paid $15 an acre for this land. The salesmen were told that they were selling land that was under an option to be purchased, and to so represent to their respective clients. Mr. Alford did not tell the salesmen that if he didn't sell enough land to exercise his option that the people wouldn't be able to get a deed. So far as the map is concerned there is no difference so far as the locations are concerned and so far as the derricks are concerned, as to whether there is merely a location or whether there is merely a well drilling. Mr. Alford prepared this map and it was in the hands of all the salesmen.

(The map produced by the Panhandle Herald, heretofore marked Government's Exhibit 21 for Identification, admitted in evidence and marked with the same number.)

I dictated one piece of sales literature to Miss Roberta Green. The literature that was handed out to the salesmen was mimeographed. She would only take the original. It is a fact that with reference to the purchase of these acres by Mr. Brubaker, in the name of C. L. Baker,

(Testimony of C. D. Jackson)

that at that time we were running ad*ds* in the newspapers showing the number of sales that were being made by the various salesmen. At that time Mr. Brubaker did not come to me and say, "Now, I am going to purchase this amount of acreage", and I didn't say, "Well, you had better not take it in your own name, but you had better take it in the name of C. L. Baker. And I didn't say at that time, "I will keep this check in the safe until you make enough money from the sale of the acreage to pay this $640." The word "Refunded" across the face of the check looks like Mr. Alford's handwriting. I can't tell about the other writing. That is my blue pencil mark in the corner. The check for $630 was returned to Mr. Brubaker on his request to Mr. Alford.

Re-Direct Examination.

(By Mr. Friedman.)

I was present and so was Mr. Bradley and Mr. Falkenstein, I think, when Mr. Brubaker personally requested the return of the check from Mr. Alford. At that time Mr. Brubaker asked for it back and Mr. Alford was quite surprised to find out that he had put in a bogus check, and that it was his own bogus order and wasn't a bona fide order. And Mr. Alford told him not to come up to the office and to get out and stay out, and Brubaker begged for his check; he didn't want to be prosecuted on a bogus check. Mr. Alford gave him the $10 and charged it to profit and loss.

(In response to queries by certain jurors, the witness testified as follows:)

I was Mr. Alford's right-hand man, and had some authority in the office myself. I didn't know what the

(Testimony of C. D. Jackson)

down payment made by Mr. Alford on the property was. I never read the option. I knew there had been a down payment, but I didn't know how much it was at that time. I knew Mr. Alford had the property tied up and had to make a payment in 30 days. I know he left to make the payment with Mr. J. St. Paul White, with some $25,000 and some hundred dollars. I didn't know sales were being made outside of the 1680 acres. I have heard the salesmen called by the Government testify that they knew or were instructed or told in the office that the 1680 acres was owned outright. I cannot tell how they reached that understanding which is different from mine. I never knew which 1680 acres he sold. I knew we were selling more than 1680 acres. I had nothing to do with the preparation of the sales blanks and the confirmations. I didn't know which particular acres the deed could be given on and couldn't be given on. I had charge of the plats myself. I handed out the plats. Mr. Alford gave me the plats on Unit No. 1. A salesman would ask sometimes for a particular spot to be sold; and if I had that map, I gave it to him. Mr. Alford didn't confine me to the 1680 acres. He confined me to Unit No. 1, which embraced several sections. Unit No. 1 was practically one-third of the entire tract, 1/3 of 30,000 acres, and embraced sections 32 and 23 and 29, which embraced the 1680 acres, and also sections 15 and 16, which was not embraced in the 1680 acres. I wouldn't say I was authorized to sell exactly one-third of the tract; but the tract was divided into three sections by Mr. Alford. The Mercury Oil Company, as I understand it, it is kind of hazy to me, was to be Mr. Alford's drilling company

(Testimony of Guy W. Slack.)

at the time of his conception of the plan. It was later changed and the Mercury Oil Company went out of existence. He made some arrangement with Mr. Carter, but what that arrangement was I don't know. The Mercury Oil Company was in reality Mr. Alford himself. I don't think it was ever formed. I think that was a fictitious name Mr. Alford was going to drill under. It was not another large oil company at the time that was printed on that map.

Further Direct Examination.

(By Mr. Friedman.)

The land was divided into approximately three units for sale, and it was the first unit that the sales were directed to. I don't think the first unit comprised as much as 10,000 acres, because several sections of the first unit was agricultural land that we didn't own. Plats were given each of the salesmen and no two salesmen were given the same plat. Each plat was for 40 acres. And no two salesmen were given the same 40 acres at the same time to sell. While these 1680 acres were somewhere within Unit No. 1, just which particular acres they consisted of I do not know.

(Whereupon, adjournment was taken until Friday, July 26, 1929, at the hour of 9:30 o'clock a.m., at which time the trial was resumed and the following proceedings had:)

TESTIMONY OF GUY W. SLACK, FOR THE DEFENDANT.

GUY W. SLACK,

being recalled as a witness on behalf of the Defendant, having previously been sworn on behalf of the Government, testified in substance as follows:

(Testimony of Guy W. Slack)

Direct Examination.

(By Mr. Friedman.)

I saw Mr. Alford in Boise City, Oklahoma, three or four days prior to January 17, 1927. At that time I accompanied him to the 30,000 acres known as the Otto Ranch, and Mr. Alford inspected the ranch. After his inspection I had a conversation with him relative to his effort to make arrangements to purchase the ranch. During our several conversations and immediately prior to our making the contract of January 17, Mr. Alford told me what he intended to do with the ranch provided he could purchase it. After I had these conversations with Mr. Alford, there was a meeting between me, Mr. Alford and the other gentleman interested with me in this property, Frank B. Burford, C. A. Tilghman, Gen. Roy Hoffman, and George Sutton, at Oklahoma City, on the 16th and 17th of January. At this meeting and prior to the execution of the contract, Mr. Alford made a statement relative to his desires and intentions in regard to this property. As a result of this meeting, the agreement dated January 17, 1927 was executed by me and Mr. Alford. Following the execution of that agreement, Mr. Alford, as far as I know, immediately left Oklahoma City.

The letter you show me dated January 20, 1927 is signed by me and is a letter written by me to Mr. Alford, and was mailed to him at the address it bears.

(The letter admitted in evidence and marked Defendant's Exhibit Q.)

I next saw Mr. Alford about midnight of the 31st day after January 17, 1927 at Boise City, Oklahoma. At

(Testimony of Guy W. Slack)

that time Mr. Alford delivered to me $25,200 in cash. The letter you show me dated February 17, 1927 is signed by me.

(The letter, with the exception of the handwriting at the top, is admitted in evidence and marked Defendant's Exhibit R.)

The signature "Charles H. Wiley, Cashier", on Defendant's Exhibit R is Mr. Wiley's signature, and Mr. Wiley at the time this was executed was the cashier of the Citizens Home Bank.

The letter dated February 10, 1927, which you show me, is a letter which I wrote, signed and mailed to Mr. Alford at the time it bears date.

(The letter admitted in evidence and marked Defendant's Exhibit S.)

After Mr. Alford made me the payment of this $25,200 he remained in Boise City a portion of the next day and he left in an automobile. It takes around three days to come from Boise City to Los Angeles by automobile, and about 27 hours by train. At the time Mr. Alford made the first payment, there was a discussion as to the manner in which the subsequent payments were to be made relative to their being made in cash or otherwise, and that conversation was followed by a written document signed by myself. The instrument dated February 19, 1927 is that document, and I believe I delivered it to Mr. Alford personally.

(Document admitted in evidence and marked Defendant's Exhibit T.)

At the time of the conversation which resulted in the writing of Defendant's Exhibit T there was present,

(Testimony of Guy W. Slack)

besides Mr. Alford and myself, Mr. W. H. Douglas, Mr. Wiley and Mr. J. St. Paul White. At that time Mr. White stated in substance that he wished to get a definite agreement about what bank or banks at this end he might use or might be used in making those payments. When Mr. Alford arrived to pay me the $25,200 Mr. White was with him, and in Mr. White's presence Mr. Alford told me that Mr. White had a substantial interest in the contract. After Mr. Alford left Boise City on the occasion of the payment of the first sum due under the option, I next saw him during the fore part of April following in Boise City. He was alone. At that time I had a conversation with Mr. Alford relative to his contract with me. Mr. Alford came seeking an arrangement by which he might continue with his option to purchase and pay for the property under more liberal terms, under more extended terms of payment, stating that the circumstances in connection with his work here made that necessary, he thought. Our conversation was all relative to an adjustment or a changing of the agreement. We were rather reluctant to do so, but eventually we did enter into an agreement, as the outcome of the conversation. That second agreement is marked Defendant's Exhibit A. That agreement was signed by Mr. Alford himself and is dated the second day of May, 1927. On the same day that Defendant's Exhibit A was executed by me and Mr. Alford, I wrote Defendant's Exhibit B to Mr. Alford relative thereto. At the time the contract of May 2, 1927 was executed, an executed copy thereof was not given to Mr. Alford. The executed copies were retained in my possession and later placed in

(Testimony of Guy W. Slack)

the Citizens Home Bank in Boise City. The letter, Defendant's Exhibit B, sets forth the reasons why the option of May 2 was not delivered. Such delivery was conditioned upon a release of the rights that Mr. Alford and Mr. White may have had in the contract of January 17, 1927.

I haven't the release that was eventually signed by Mr. White. The letter you show me which was handed to you by Mr. Armstrong refreshes my recollection as to when the release was signed or received by us, and that was in September of 1927. Prior to the execution of Defendant's Exhibit A, the contract of May 2, 1927, I know that Mr. Alford received some telegrams from Mr. White while he was negotiating with me, and those telegrams were shown to me and I know at that time Mr. Alford sent some telegrams to Mr. White, the copies of which I saw. Defendant's Exhibit C is the original of a copy of a telegram that I think I saw at that time, and Mr. Alford showed me what he said was a reply to that telegram. The telegram you show me dated April 30, and marked Defendant's Exhibit D is the telegram he showed me. At the time he showed me Defendant's Exhibit D my thought and suggestion to Alford was that the terms suggested in the telegram by Mr. White might be very questionable. Following this statement by me, Mr. Alford sent another telegram to Mr. White which is Defendant's Exhibit E which I saw. I saw Defendant's Exhibit F, which is the reply that Mr. Alford received from Mr. White and upon receipt of this last telegram and following it the agreement of May 2 was executed.

(Testimony of Guy W. Slack)

During the time these negotiations were pending and these telegrams were being sent back and forth between Mr. White and Mr. Alford, conversations were had between me and Mr. Alford relative to the first option and the payment that was to be made thereunder. In general it was stated that Mr. Alford might consider the option in force pending the completion of this arrangement. Following the making of the agreement of May 2, 1927 I personally made an effort to procure the release from Mr. White and Mr. Alford. I wrote some letters to Mr. Alford and I probably wrote some to Mr. White, but I am not sure whether I have any copies of them with me. The paper you show me is the copy of a telegram dated June 30, 1927 that I sent to Mr. Alford.

(Telegram marked Defendant's Exhibit U for Identification).

Nothing was ever paid under this contract of May 2.

Cross Examination.

(By Mr. Armstrong.)

At the time I received these releases from Mr. White and Mr. Alford in September, I didn't forward a copy of this contract (of May 2) to Mr. Alford because by its own terms it had expired at that time. I think it is correct that I first saw Mr. Alford, not in the fore part of April, but probably the 28th, 29th and 30th of April relative to the negotiations for the second contract. I can't remember Mr. Alford telling me during the course of these negotiations that in conducting his sales campaign he had contracted to deliver to purchasers land outside of the 1680 acres, which was included within the first part of the first option. My understanding was that

(Testimony of Guy W. Slack)

Mr. White's interest in the option was an assignment of a one-half interest thereof by reason of the fact that Mr. White had paid the original $25,200. That was told to me at the time the first payment was made. I also understood that Mr. White was to receive a deed to the first 1680 acres. I never saw the agreement between Mr. White and Mr. Alford and did not understand the terms thereof. There were no payments made on either or these options except the $25,200 on February 17, 1927. I received the patents from the State of Oklahoma referred to in my letter marked Defendant's Exhibit R for the lands we did convey. I did not attempt to obtain the other patents because no payments were made to me which required me to obtain the patents. In Defendant's Exhibit Q it states that I sent a map to Mr. Alford. Government's Exhibit 21 looks like one similar to what I would have sent, but I don't know whether it is or not. I recall a map very similar to that map which was distributed all over our country. We had two or three different maps we used at that time, and I wouldn't be at all sure that this was a copy of the one I sent Alford. I am not sure when the Sinclair well was started to be drilled. I know it was drilled, but I am in doubt as to when it was begun. The closest well at that time was the Ramsey well which was about ten miles away from the closest portion of the land. I am afraid I don't know how close was the next closest well; there were so many of those wells begun at nearly the same dates. It was seven miles from the closest point of this land to Boise City. On January 17, 1927 the population of Boise City was possibly a thousand people or eight hundred. Boise

(Testimony of Edwin A. Westerberg)

City is located in about the center of a circle of several towns, and the next closest city is approximately 50 miles away. Several of them are within five miles of the same distance from Boise City, approximately 50 or 55 miles. The largest city in that circle is Dalhart, Texas, with a population of about 5,000. The next largest city 140 miles away is Amarillo, Texas, and has a population of about 50,000.

(In response to questions by jurors:)

When Mr. Alford paid the $25,200 I did not issue a warranty deed at that time but I promised to issue a warranty deed to Mr. Alford, and did issue and mail it.

Re-Direct Examination.

(By Mr. Friedman.)

(It was stipulated that the contract of May 2 does not include or cover the 1680 acres covered by the warranty deed executed for the payment of the $25,200.)

The letter you show me dated August 13, 1927 is signed by me and is a letter I wrote to Mr. Alford and mailed to him.

(Letter marked Defendant's Exhibit V for Identification.)

The telegram you show me dated April 23, 1927 is one I sent to Mr. Alford.)

(Telegram marked Defendant's Exhibit W for Identification.)

TESTIMONY OF EDWIN A. WESTERBERG, FOR THE DEFENDANT.

EDWIN E. WESTERBERG,

called as a witness on behalf of the Defendant, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside in Los Angeles, and I am the owner of the California Map and Blue Print Company in the Story

(Testimony of Edwin A. Westerberg)

Building, and have been such owner for about twenty years. The business of the California Map and Blue Print Company consists of various things. It is map drafting, blueprinting, creation of maps, etc. During the course of my conduct of this business I have had occasion to draw maps, particularly of areas used for oil-drilling purposes, and during that period of time I have had occasion to examine maps drawn by other people in the same line of business. To a certain extent I am now able to state what the usual marks and symbols are which are used in such maps.

(Government's Exhibit No. 20, having been mislaid, it was stipulated that a duplicate thereof be used in examining the withness with like effect as if he had been shown the original exhibit.)

I have examined the map and legend you have just handed me. I don't believe that map shows any producing wells. As far as I can see it does not. The map does show wells being drilled and how many. The map also shows locations for wells. According to the legend here, "Drilling wells, gas wells and locations" are shown by a derrick, and it seems there are a number of derricks which indicate drilling wells, gas wells and so on. Of course, the scale of the map would prohibit the exact location in any way, shape or manner. It just merely indicates that there might be a well in that part of the country some place drilling, to locate it. According to the legend, drilling wells, gas wells and locations are described by a derrick. Wherever there is a derrick, it indicates that there is either a drilling, gas well or a location.

(Testimony of Edwin A. Westerberg)

(In response to questions by Jurors:)

The derricks on this map indicate drilling wells, gas wells and locations; three different things. There is nothing on the map to differentiate between what is a location and what derrick represents a drilling well. This map is purely and simply a sales campaign map. It would not be used by any of the large oil companies or the Government in showing the location of the wells, drilling or otherwise. I would not say the map is accurate. It is a very large territory. I would say it was not accurate. I had nothing to do with the preparation of this map, and this is the first time I have seen it. The map was prepared by James R. Payne, consulting engineer, of Los Angeles.

Cross Examination.

(By Mr. Armstrong.)

It is not the usual and ordinary way to designate a drilling well and a location by the same designation. There does not seem to be any particular legend for this particular kind of map. They use a great deal of license in drawing them. With the large oil companies they have an accepted code that is exchanged between them, and the Government,—the State Department, at least,—that all these various conditions are indicated on the map by certain signs, but these bird's eye view maps and maps of this character I have never seen any concrete legend that we had to abide by. It was pretty much up to the draftsman or the artist who makes it. On a flat map the large oil companies would not indicate a drilling well by a derrick. I have seen similar maps to the one handed to me by the Court. I have seen lots of them.

(Testimony of J. W. Alford)

Re-Direct Examination.

(By Mr. Friedman.)

According to explanation on the map, it shows seven drilling locations: the Sinclair has one; the Ramsey Oil, 3; Phillips Oil Company, 1; Wilkerson-Valerius, 1; Brookins-Flowers, 1.

TESTIMONY OF J. W. ALFORD, THE DEFENDANT.

J. W. ALFORD,

the defendant, called as a witness in his own behalf, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. Friedman.)

I reside at 435 South Detroit Street, Los Angeles, California, and have been a resident of Los Angeles approximately 12 years. I am 36 years of age, and married. Between the 10th and 15th of January, 1927, I visited Boise City, Oklahoma, and during my visit I inspected the acreage which subsequently became the subject of the agreement between me and Mr. Slack. I drove over the land and walked over it, and I inspected the surrounding territory. During this period of time I saw wells being drilled in the adjacent territory. I was driven out to a well that was being drilled by W. R. & W. E. Ramsey on a large block of leases that extended practically up to and adjoining the Otto Ranch, which is covered by the option agreement which you mentioned. I also saw a test drilling some 12 miles directly south of this property, known as the Buffalo Springs Test. I

(Testimony of J. W. Alford)

think those were the only drilling wells that I saw at that time, that I recall from memory. At that time I made an investigation relative to whether there were any oil holdings by any person or firm in the territory adjacent to the Otto Ranch. I made these inquiries of a real estate firm and a geologist known as French Brothers in Boise City, Oklahoma. Mr. French informed me that he had been engaged for some time in blocking up leases for several large major oil companies including the Ramsey Brothers, and he mentioned to me Sinclair, Marland Oil Company, Magnolia Petroleum Corporation, Wilkerson-Valerius, Texas Company, and quite a few others that I don't just recall at present. I met Mr. Slack about the same time I started my investigations of the Otto Ranch. And following my meeting with him I had a conversation with him relative to the ranch. In this conversation I had with Mr. Slack I told him the purposes for which I would like to acquire this ranch. At the first conversation relative to this matter there was present Mr. Slack and I believe the Vice-President of his bank, Mr. Hood. I told Mr. Slack I had come all the way to investigate that property; that I had been over it and over the surrounding country, and I was of the opinion that it would make an excellent development project. I told Mr. Slack that my plan embraced the dividing of this entire tract into three separate units of approximately 10,000 acres each, which were to be known as Unit No. 1, Unit No. 2 and Unit No. 3. Each one of these units was to be divided into one-acre tracts, and out of each unit I was to reserve for myself a 1,000-acre tract which I would designate as a drilling block,

(Testimony of J. W. Alford)

and which I proposed, in view of the surface indications from a structural standpoint, and from the other activity around there, to drill a test well, and if necessary to carry it from four to five thousand feet deep. I explained to him further that my plan embraced the sale of these one-acre tracts around each one of these drilling blocks, in the center of each one of these units, to the general public, at a price of $100 per acre; that price to be paid on the time payment basis, on a contract calling for a 40 per cent down payment and 10 per cent a month without interest. Following my conversation with Mr. Slack he introduced me to his associates in this Otto Ranch in the Huckins Hotel, Oklahoma City. There I met Mr. Burford, an attorney, Mr. Sutton, Mr. Tilghman, and Gen. Roy Hoffman. At the time I met these people, I went into detail with them concerning my proposed plans for the Otto Ranch, and following that conversation with these people the terms were discussed, which resulted in the execution of the contract which is Government's Exhibit 1 here. Following the execution of the contract, I left Oklahoma City on the first train that I could get out of there for Los Angeles, immediately after the signing of that contract. On my return to Los Angeles I began to negotiate with several of my associates, friends and clients regarding the financing of this project; that is, the meeting of the first two payments; that was my immediate object and goal. At that time I knew Mr. J. St. Paul White very well, and in the course of my negotiations for the financing of the first and second payment, I had occasion to meet Mr. White and had conversations with him relative to this financing. My

(Testimony of J. W. Alford)

first conversation with Mr. White was between the 5th and the 10th of February, 1927. It occurred in his office in the Metropolitan Theater Building at Sixth and Hill, and he and I were the only ones present in his small private office, but the door was open, and in the adjacent office, and within earshot was his stenographer, a Miss Beck, and a boy employed in the office by the name of Merrill or Mitchell. I told Mr. White that I had been over to Oklahoma and had tied up some 30,000 acres in Cimarron County, around which there was considerable oil activity; that one well had already been heralded to the world in newspapers as a 500-barrel producer, and I named the Ramsey No. 1 as that well. I showed him several maps put out by various oil publications and by various oil companies showing the lease-holdings of the various companies around there and named specifically the Marland, the Texas, the Magnolia and the Globe and quite a few others, and I told him I had been negotiating with one or two parties in regard to financing me to the extent of $50,000 and I named the fact or, rather, I stated to him the fact that I had called on Mr. R. I. Rogers, who is president of the Merchants National Bank, the Merchants National Bank at that time, and that Mr. Rogers had told me he was interested at that time with Ramsey in a considerable number of leases in the same locality, and that he would not be interested in so large a project as mine at that time, but that I might see him later. I told Mr. White that I had called on Mr. Cassidy, Mr. James M. Cassidy, president of the Wilshire National Bank of Los Angeles, California, with the same idea in view, and that Mr. Cassidy did not know himself

(Testimony of J. W. Alford)

whether he would be interested, but that he might have one or two clients of the bank that would, and that he would put me in touch with them. I also mentioned the fact that I had called on Mr. Hamilton Cotton, whom I knew had financed Ole Hanson and his subdivision at San Clemente, and I had quite a lengthy discussion with the stenographer in this project, who seemed quite interested, and I was on my way back to Mr. Cotton's office to consult with Mr. Cotton's secretary regarding this project, when I stopped in to Mr. White, happening to remember that he was a friend of several capitalists. It never occurred to me that Mr. White might be able to finance the project himself, and I told him so, only I showed him what I had, and what I had done, and explained to him my—

MR. ARMSTRONG: Just a moment. That is objected to on the ground that it calls for a conclusion and I would like to know what he told him.

THE COURT: Yes, tell what you told him.

A. I told him that I had this property tied up; told him that I had the nucleus of a sales organization, an establishment and equipment with which same could function efficiently, and reminded him of my success in a former project of this nature, in its sale to the public.

MR. ARMSTRONG: That is objected to. I want to know what that is. I think I am entitled to know what he told Mr. White.

THE COURT: Instead of saying a successful project, if you did refer to the project, tell what it was.

A. I refreshed his memory as to the fact that I had successfully sold, over a period of some six or eight

(Testimony of J. W. Alford)

months approximately 100,000 acres of leases in the State of New Mexico.

Following my statements to Mr. White he told me that he might be interested in helping me to secure the finances for the first two payments. He told me that he would get in touch with Mr. Art Altam, and explained to me that Mr. Altam was the owner at that time of an 80 acre lease in the Seminole field of Oklahoma, which, up to some year and a half previous had just been raw land, but which at that time had some 16 or 18 producing wells on it, which showed Mr. Altam an income of between five and ten thousand dollars a week or a month,—I forget just what he said,—but he told me that Mr. Altam was familiar with Oklahoma, and with the oil properties, and that he might be interested in helping me to finance this contract.

I next saw Mr. White in reference to this matter that same afternoon. He asked me that morning to call back that afternoon after he had a discussion with Mr. Altam and I returned. There was no one present but Mr. White and myself. Mr. White told me he had gotten in touch with Mr. Altam by telephone at the Los Angeles Athletic Club and that Mr. Altam was engaged in a bridge game or something and did not want to discuss business that day, but that he, White, had been thinking the matter over since the morning meeting, and he was of the opinion that he could finance part of that $50,000.00 himself immediately. I asked him how much and he said, "The first payment when it was due." White asked me what I would be willing to pay him for a loan of $25,200.00. I told him that I would be willing to pay him $100,000

(Testimony of J. W. Alford)

bonus, in addition to his $25,000 back, out of the sales of the property. He asked me what about the expenses to put the sales organization in the field, and I told him at that time that I had approximately fifteen or sixteen thousand dollars myself; the equipment was all paid for, and the only immediate expense would be the preparation of literature, maps, and a survey of that property.

Q. What did Mr. White say to that?

A. Mr. White said that that listened very good to him, and for me not to negotiate any further with Mr. Cotton or Mr. Cassidy or Mr. Rogers or anyone else with whom I was negotiating, and give him until the next afternoon to think the proposition over, and in the meantime he would see what he could do towards the immediate raising of this money.

I saw him the next day at his office. No one else was present. Mr. White said that he believed that he could raise that amount of money immediately, but he did not feel that he wanted to loan it at such a usurious rate of interest. But he thought that if I would sell him a half interest in my contract he would be willing to advance the money for the first payment, provided I advanced the money to defray the sales expenses.

Q. What did you reply to that?

A. I told him that I would have to think that over a little bit myself; that it meant the giving up of something that already had the earmarks of being exceptionally valuable, and that while my time was getting short for the first payment, I still thought that with the amount of money I had in my possession, that I could borrow sufficient money, in small amounts from my former clients

(Testimony of J. W. Alford)

and friends to make the first payment, but that in making the first payment that way I would have nothing left to defray the sales expenses, and I asked him if he would not go as high as $50,000 immediate cash for that half interest. He said no, that he could not do that at that time, but that he would help me with the second payment of $32,400, or maybe in that time be able to make it himself, in the event that under my sales plan I had not derived sufficient revenue from the sale of those acres.

At the time I was having these conversations with Mr. White, the information had come to me that the Ramsey well had come in. I told Mr. White I would think the matter over and let him know regarding it the next day. I saw him the next day at his office,—just he and I were present at the conversation.

Q. What was said on that occasion?

A. He told me that he had $25,200 which he would advance immediately, and he would like to go with me to Oklahoma to inspect the property and the oil situation around there, and I asked him at that time if his putting in the $25,200 was predicated upon his inspection of that property, because if it was,—it was then, I think, the 13th of February, and that my time then—if his inspection did not satisfy him, I would be over a barrel, and that I would not have time then in which to make other arrangements for that first payment. He said no, his inspection, or rather, his putting up that amount of money was not predicated upon his inspection; that he had already made up his mind to do that, but he just wanted first hand knowledge of the property itself.

(Testimony of J. W. Alford)

Q. Now, what did you say to that proposition? Did you accept it or reject it?

A. I accepted the proposition of his assisting me with the second payment. I had a great deal of confidence in Mr. White and accepted his word,—that his, his verbal agreement concerning the first payment, not predicated upon his inspection of the property, and his verbal agreement further to make the second payment or assist in making it, and I did not even ask Mr. White for a contract.

Q. What followed between you and Mr. White after this conversation you have narrated?

A. I told Mr. White that I would prepare to leave Los Angeles for Boise City immediately, and with that I would have to wire Mr. Slack the date that I would be there, and make reservations on the train that was to carry us there, and he suggested that I attend to those details while he attended to the getting of the necessary money.

Q. And what happened after that?

A. Mr. White 'phoned me at my office and said that he had the money, but in reading over my option contract which I left with him for his inspection, he discovered that a certain clause in there called for the payment in cash, and he at that time stated he had a cashier's check and he thought—he asked me if it would not be better that he would go to the Federal Reserve Bank and get the money in cash, and I told him as long as the contract called for it in cash and the property looked pretty valuable from the activity over there, it would not do to take any chances on any technicalities in that contract.

Q. Yes, and what followed that?

(Testimony of J. W. Alford)

A. The next I saw of Mr. White he came into my office and he showed me two $10,000 bills, a $5,000 bill and two $100 bills, and he says, "Here is the first payment, and there is more where that came from."

Q. At the time that you are now testifying to, had anything been reduced to writing between you and Mr. White?

A. No, sir.

Up to that time I had not prepared any papers or had any papers been prepared to show the dealings with Mr. White and me. Prior to my going to Oklahoma with Mr. White, Mr. White prepared a paper. This contract was actually signed at ten o'clock on the morning of February 15th, 1927, and we left for Oklahoma at five o'clock that afternoon. Mr. White told me that he had dictated this contract to his stenographer, Miss Beck, and that contract, which was signed, is the agreement which is marked Government's Exhibit No. 2 here in evidence.

When I signed this contract in the morning in Mr. White's office I merely glanced through it. I stated before that I had implicit confidence in Mr. White; that I had many business dealings with him, always agreeable and profitable for both of us. And I was in a hurry to get the reservations; to leave my office force fully instructed, and I think I just tarried in Mr. White's office, not five minutes, to attach my signature to the contract, put a copy in my pocket and explained to him that we would discuss it thoroughly on the train over, and if there were any alterations or changes to be made in it, we would make them at the time, and he agreed with me.

(Testimony of J. W. Alford)

Q. On the train did you have any conversations with Mr. White relative to the contract as originally drawn? You can just say yes or no.

A. Yes.

Q. And following those conversations were there any amendments made to the contract?

A. There were.

Q. And those amendments were attached to the contract?

A. One of them was written on the contract in pen and ink in Mr. White's handwriting and signed by each of us, and it was pretty hard to write on the train.

Our train was eight hours late, due to washouts, and Mr. White and I arrived at Boise City at approximately twenty minutes to twelve midnight of the expiration date of the first payment. Mr. Slack was sitting in his bank with the door wide open, and I think there were from eight to twelve other people there. I walked in and laid the two $10,000 bills and the $5,000 and two hundreds on his desk, and that that was $200 more than the capitalization of his bank at that time, and Mr. Slack said, "You should not have come that long way with the cash." He accepted the money and that night gave me a receipt for the money. This money was paid at midnight on February 17th, 1927. I left Boise City again between 4 and 5 o'clock on the 18th of February, 1927, and arrived back in Los Angeles on either the 21st or 22nd of February, 1927. I was not in Los Angeles on the 18th day of February, 1927.

At the time I paid Mr. Slack the $25,200, Mr. White was present. This was in the ante-room of the Citizens

(Testimony of J. W. Alford)

Home Bank of Boise City, Oklahoma. At that time I told Mr. Slack that Mr. White was taking an interest with me in the contract and that I was going to assign him a half interest; and that he was financing me or had made arrangements to finance me. As we were going out of the Citizens Home Bank in Boise City the next day, Mr. White called my attention to the clause in the contract that called for cash payment and he told me of the danger of driving some fifty miles at night over those prairies with that amount of cash in our pockets, and suggested we talk with Mr. Slack regarding future payments being paid either in New York Acceptance or some cashier's check or some bank acceptable to Mr. Slack in Boise City. Following that there was a conversation between Mr. Slack, Mr. White and myself. Mr. White told Mr. Slack that it was inconvenient to bring cash every time; that this time he had had to go to the Federal Reserve Bank to get it, and he did not want to have to do that with an amount like $32,400, and wanted to know if a cashier's check on the National City Bank of Los Angeles would be acceptable to Mr. Slack. Mr. Slack told us that a cashier's check on some—or exchange on some representative bank of Los Angeles like the Bank of Italy or some other large institution, would be perfectly acceptable to him.

Q. Was anything said about Mr. Slack executing any document setting that forth?

A. Mr. White requested that Mr. Slack give us that in writing, as a sort of amendment to the option contract, and it was done.

While we were in Boise City on that occasion, Mr. White inspected the property. Mr. French, the geologist,

(Testimony of J. W. Alford)

Mr. White and myself took Mr. French's car and drove all over the property and to the Sinclair well, where I took a picture of Mr. White, and to the Ramsey well, where I also took a picture, and to the approximate location for the well which we intended to drill on the property in the southern half, where I also took a picture.

The document you hand me, Defendant's Exhibit J for identification, I am familiar with. I received the original of that through the mails. This paper is a photostatic copy of the original which I had made. I have searched all through my files for the original and I can't find it. There were so many photostatic copies made from the original that the original probably became mixed up with them, or maybe it was given out to some member of the salesforce.

(Defendant's Exhibit J for identification was offered in evidence by the defendant and admitted by the Court to be considered by the jury upon the question of the intent of defendant, and his good or bad faith in selling the property, and the jury were instructed that it was not admitted as proving the facts set forth therein, but that it was sent to the defendant, and the defendant read it. The letter was then marked Defendant's Exhibit J in evidence).

Upon our return from Boise City, I had further conversations with Mr. White relative to the second payment due under the contract with Mr. Slack. I do not recall the exact date of the second payment, but I can place it sometime in the early part of March, and the discussion was held in Mr. White's automobile with me while we were on our way to look at a second hand Dodge car

(Testimony of J. W. Alford)

which I was contemplating purchasing for the drilling department of the Company. Mr. White was quizzing me a bit on the sales organization and its efficiency, and I told him that from my experience with sales organizations, that we were getting under way much quicker than usual with the selling proposition, and that I had reason to believe that the sales would be made with sufficient rapidity to make a substantial part of that second payment when it was due. Mr. White told me that I did not have to worry a great deal about that; that he was perfectly willing to make a substantial part of that second payment, if not all of it, and as I remember it, that was approximately all that was said on that particular conversation.

The next conversation I had with Mr. White was about ten days before the second payment was due. It occurred in my offices in the Lincoln Building and Mr. White and I were the only ones present. I told Mr. White that the time was getting kind of short for that next payment, and that I had—while I had considerable contracts on the books, there was not sufficient cash to meet even a substantial part of it, and still defray sales expenses, and I thought—I suggested to him, rather, that he should get out and make arrangements for that payment, or a big part of it, and he thought that would be a wise idea himself.

Q. You say "he thought". What did he say?

A. Well, he said he was short of ready cash at that particular time, and it meant the placing of a mortgage on a flat that he owned.—I forget just where he said the flat was located, but that he would go ahead and make

(Testimony of J. W. Alford)

those arrangements immediately, because it would take probably four of five days to make the loan, and he left my office after that conversation.

Two or three days later I stopped by Mr. White's office and asked him what progress he was making towards the loan. He said everything was going along okay. On the 14th or 15th of April I went to Mr. White's office and told him I was ready to go to Oklahoma and that I would take the payment over with me, as there were one or two matters I wished to discuss with Mr. Carter and Mr. Slack. Mr. White said that he hadn't got his wife to sign the mortgage, and that it looked like he was going to have a tough time with it. I told him it was a pretty late date to break that news to me, but he said, "Don't give up hope." White said that he thought he could get the deal over. That was the sum and substance of the conversation; I don't remember the exact words. I saw Mr. White twice a day from then on with reference to this payment. Around noon of the day the payment was due in Boise City, Mr. White told me that he couldn't make it. I was pretty much upset then, and I don't know just exactly what I said at that particular time, but I know I went to a friend of mine whom I thought I could raise at least part of the money from, but he told me that it would be impossible for him to do so on that short notice.

From the time Mr. White and I returned from Boise City in February, 1927, until the time that Mr. White informed me he couldn't supply the second payment or any part of the second payment, Mr. White had visited my office about four or five times a week, mornings and

(Testimony of J. W. Alford)

afternoons, and he saw me on nearly every one of those occasions. During these visits to my office by Mr. White, there were discussions between him and me relative to how the business was going and what was being done. During these visits Mr. White did not go into the ledgers. We had a system called a card index system that was kept in a file, in which every contract was entered, the date that it was sold, the salesman who sold it, who got the commission and how much, who got the override and how much, the name of the person, and the name of the sales manager. Mr. White seemed very much taken with this system of keeping the records and he inspected it fully on many occasions. He discussed with me the financial condition of the project.

After I had the conversation with Mr. White, relative to the second payment, I wired Mr. Slack and received a reply from him. I think I showed those wires or took them down to Mr. White and told him it was impossible to get an extension of that payment and that he would either have to make it or our contract would go by default. Mr. White said, "I haven't failed yet to get that money, I am still negotiating with the bank and my wife." I do not recall at this time of having done anything else except waiting on Mr. White.

This state of affairs continued until about five or six hours before that contract would have been legally in default. I think sometime around six or 6:30 o'clock in the evening of the 17th day of April, Mr. White called me at my home by telephone, and asked me to come down to his office to discuss the making of the second payment and a new contract. I went there and saw Mr. White,

(Testimony of J. W. Alford)

no one else was present, and Mr. White said, "Well, I have raised that money for that second payment, but," he says, "It is a lot of money, and it was not easy, and I am going to hand you a new contract which is pretty stringent in its terms, but if it is okay with you, we will wire that money to Boise City tonight."

Q. What occurred at that time? Were you shown anything?

A. He handed me a contract,—a draft of a contract which I have in my files there.

At the time Mr. White presented to me the original contract that I signed on the morning of the day he and I left for Oklahoma,—there was only one copy of that contract presented to me for my approval,—there was no proposed contract submitted to me and then redrafted and then executed. I signed the first contract that was presented to me by Mr. White. Defendant's Exhibit G for identification, which you show me, from a casual inspection, I think I have seen that contract in its entirety before in Mr. White's office at approximately 7:30 o'clock in the evening of the 17th day of April, 1927. To the best of my belief it is the copy of the contract, or the contract which he gave me for my consideration and to sign, and which he told me he had drawn up and that it contained stringent terms, and I took it with me. (Defendant's Exhibit G for identification offered and received in evidence, and marked Defendant's Exhibit G in evidence."

I took this second contract away with me and read and studied it and at a subsequent conversation told Mr. White that I couldn't sign an instrument like that. Mr.

(Testimony of J. W. Alford)

White then said that he couldn't make the payment. I told Mr. White that I would have to let the contract go by default and that this put me in a very embarrassing position. Quite a few sales had been made and the money received on the same, as he knew, had been expended in salesmen's commissions, office rent, clerical work, literature, maps, the sending of Mr. Carter to Oklahoma, and traveling expenses over there and back and that money that I had to put in and had borrowed to put in was expended, and I didn't hardly know which way to turn, but that I thought I should go to Oklahoma and discuss the situation with the owner. I told all this to Mr. White and, as I remember, that was all that was said, and that constituted the end of my negotiations with Mr. White at that time relative to the second payment. This last conversation was the next day after I read that contract over and the contract which I held with Mr. Slack was in default. This second contract is dated the 14th day of February, 1927, and is the same date that the original contract between Mr. White and me was dated. Mr. White, when he handed me the contract said, "You notice, John, that I have dated this the 14th day of February, 1927, and the contract between you and I is not a matter of record, and it is littered up with amendments, and I have them all included in here, and I will just destroy all copies, and this will take its place." This paper was the original document that he gave me and I have had it ever since.

With reference to the telegraphic communications I had with Mr. Slack, about the time these negotiations with Mr. White were being carried on, the telegram you show

(Testimony of J. W. Alford.)

me, dated April 14th, 1927, I received. Following my refusal to sign the second contract presented to me by Mr. White, I went to Oklahoma. I think I left Los Angeles on about the 26th or 27th—it may have been around the 23rd or 24th of April,—I couldn't recall the exact date. The telegram you show me refreshes my memory, I left on Monday, April 25th. When I arrived in Boise City, I saw Mr. Slack and had a conversation with him at the Citizens Home Bank there. Just Mr. Slack and I were present. I told Mr. Slack that after the receipt of his several telegrams telling me that a new contract might be entered into, I had come over to explain the situation to him, and he asked me what was the trouble. I then told Mr. Slack all that had transpired between me and Mr. White; that my financial arrangements had blown up, and that I would either have to make a new contract with him or just forget that project in its entirety.

Following my conversation with Mr. Slack, a new agreement was prepared and executed by me and Mr. Slack in Oklahoma City. Defendant's Exhibit A, an agreement dated the 2nd day of May, 1927, which you show me, is the agreement I signed at that time.

Prior to the signing of this agreement there was a conversation between me and Mr. Slack relative to Mr. White and his interest in the prior option.

Q. Now, what was said?

A. Both Mr. Slack and Mr. Burford, who was Mr. Slack's attorney, said that they had no objection to entering into the new agreement with me, but that they thought as long as the assignment of one-half interest by my wife and myself in the prior contract constituted a cloud on the

(Testimony of J. W. Alford)

property still not paid for, that it would be necessary for each of us to execute a release on same.

Q. And following that did you do anything so far as Mr. White is concerned?

A. I wired Mr. Slack.

Q. You wired Mr. Slack?

A. I wired Mr. White.

Q. Yes. I call your attention to Defendant's Exhibit C and ask you whether or not that is the telegram you sent to Mr. White? (Handing document to the witness).

A. That is the identical telegram.

Q. And I call your attention to Defendant's Exhibit D, and ask you whether that is the telegram you received back from Mr. White? (Handing document to the witness.)

A. It is.

Q. Now, following the sending of this telegram, Defendant's Exhibit C, and the receipt by you of Defendant's Exhibit D, did you have any further talk with Mr. Slack relative to the position of Mr. White?

A. I showed the telegram to Mr. Slack.

Q. Yes.

A. And he showed it to Mr. Burford who stated that it was not sufficient to warrant the entering into of that contract. They suggested that I wire Mr. White explaining more fully.

Q. Let me call your attention, then, to Defendant's Exhibit E, and ask you what that is (handing document to the witness.)?

A. That is the telegram that I sent to Mr. White after the receipt of his reply to my first telegram.

(Testimony of J. W. Alford)

THE COURT: All four of those have been read, have they not?

MR. FRIEDMAN: Yes, I will not read them. They have been read twice to the jury. I read them on Mr. Slack's examination this morning.

Q. Calling your attention to Defendant's Exhibit F, I will ask you whether or not that is the reply you received from Mr. White?

A. It is.

Q. Following the receipt of these telegrams from Mr. White and the last one, did you show this last telegram to Mr. Slack and Mr. Burford?

A. Yes.

Q. What was said about them at that time?

A. They said they would execute the contract on the strength of the second telegram.

Q. And it was executed?

A. It was executed.

Q. And as I recall, it was left in the custody of Mr. Slack?

A. Both copies were left in the custody of Mr. Slack.

Q. Until such time as the releases were forthcoming?

A. But he gave me a letter to carry with me, advising me of that fact.

Following the execution of this agreement of May 2nd, 1927, I returned to Los Angeles as quickly as I could, I think within two or three or four days. Upon my return from Boise City, I saw Mr. White and showed him the letter I had received from Mr. Slack, Defendant's Exhibit B, which is the letter which was given to me after the contract of May 2nd was signed. I saw Mr. White either

(Testimony of J. W. Alford)

the evening of the day I arrived or the day following, and I showed him this letter in his office. I haven't any recollection if any one else was present or not. I told Mr. White that they had executed the contract with me and were going to hold it in escrow in the Citizens Home Bank until I had forwarded to them the release of our interest in the former, or defaulted contract, and that we would have to draw up one and forward it immediately so that I could get the original copy of the contract. Mr. White said he thought that could be done all right. I next saw Mr. White, relative to this matter, in the office of Martin Forrest, his lawyer. Mr. White and I had had a discussion about the drawing up of the release over the telephone and he thought it best that Mr. Forrest should assist in the preparation of the release, so I went to Mr. Forrest's office with my attorney, Mr. Stuart D. Anderson, and there met Mr. White and we discussed this release. This was somewhere between the 6th and 10th of May, 1927. No release was signed at that time.

Q. What, if anything, was said to you by Mr. White relative to the non-execution of the release?

A. Mr. White thought, or rather, told me that he thought he should have an adidtional four sections of land deeded to him out of the land which I had signed this new contract to purchase, as a bonus for his signing the release. I told Mr. White that I did not read his telegram that way, or I wouldn't have attempted to sign the new contract, because the new contract called for a payment of $20.00 an acre, and four sections of land at 640 acres per section at $20 an acre, was quite a big dig out of the remainder of that land.

(Testimony of J. W. Alford)

Q. Then what happened after that, anything further said at that time?

A. I think Mr. Forrest said that he thought Mr. White was entitled to four sections too, as a bonus for his signing the release. The release was not signed, and I left the office.

Q. Did you make any further efforts, or did you have any further conversations with Mr. White relative to the signing of that release?

A Several.

Q. Did Mr. White change his position in any of these conversations?

A. No, sir.

Q. In the meantime had you signed any independent release?

A. Yes.

Q. What did you do with the one you signed?

A. I don't remember correctly whether I mailed it to Mr. Slack or not, but I don't think that I did. I think it was drawn by my attorney in the form of a joint release, to which I attached my signature, and to which I was constantly trying to get Mr. White to attach his.

Q. Did Mr. White at any time during the month of May or June, to your knowledge, sign any release?

A. No, he didn't.

The telegram you show me, marked Defendant's Exhibit W for identification, I received. (Defendant's Exhibit W admitted in evidence and marked Defendant's Exhibit W in evidence.)

Subsequent to the payment of the $25,200, I received a deed from Mr. Slack for the first 1680 acres of land cov-

(Testimony of J. W. Alford)

ered by the first option. I kept this deed in my possession for some little time, ten, twelve, fourteen or fifteen days, and then I made out a deed from it to J. St. Paul White and had it duly executed by my wife and myself before a notary, and the deed Mr. Slack had made to me I also gave to Mr. White, so that the chain of title would be in his possession.

I have seen Government's Exhibit No. 15 here at the trial. I did not see that paper during the time either Mr. Brubaker or Mr. Broadhead were in my employ, at any time. I never had any conversations with Mr. Brubaker relative to Government's Exhibit No. 15. I never had any conversation at any time or at any place with Mr. Brubaker relative to any literature that was being put out or used by me or my company during the time he was in my employ, which referred to the fact that I was spending $300,000 or any other sum of money for the then drilling of oil wells.

Prior to this trial I never saw Government's Exhibit No. 23. I never had any conversation with Mr. Brubaker relative to Government's Exhibit No. 23, at any time. I never had any conversation with Mr. Broadhead at any time relative to either Government's Exhibit No. 15 or Government's Exhibit No. 23. I never saw either of those documents before. I never had any conversation relative to either of those documents with Mr. Bradley.

In none of the literature that was prepared or used, or authorized to be used, by me up to the 23rd day of April, 1927, was there any statement contained therein to the effect that I was spending $300,000 or any other sum of money for the then drilling of oil wells in Oklahoma, nor

(Testimony of J. W. Alford)

did any such literature contain any such statement that I would expend $300,000 for the drilling of wells.

I knew Mr. Broadhead during January, February and March, 1927. I do not recall exactly when he left my employ, but it must have been in March sometime. Mr. Broadhead was discharged for his general inefficiency to function in the capacity of sales manager, for his lack of knowledge of the product which we were selling and for certain statements that he made from time to time to the sales force, which were called to my attention by several of the salesmen, and for which he was corrected so many times, and so many times made the same mistake, that I had to let him go.

At the time I discussed with Mr. Broadhead his entering my employ, I did not state to him that the land in Cimarron County, Oklahoma was my land. I never at any time made such a statement to Mr. Broadhead. I never explained in detail to Mr. Broadhead the terms and conditions under which I was acquiring this land. I told Mr. Broadhead that I had approximately a thirty thousand acre ranch, in a solid block, tied up under a contract of purchase in Cimarron County.

The literature that was prepared for distribution among the salesmen in my office was either printed in booklet form, mimeographed, multigraphed or in newspaper form.

I never, during the last part of February, 1927, in my office, or at any other place or time told Mr. Broadhead that a warranty deed would be given to each purchaser of the land.

Q. Now, with reference to the sale of this land, Mr. Alford, when you first started this project, and after you

(Testimony of J. W. Alford)

had procured your agreement from Mr. Slack of January 17, 1927, did you do anything for the purpose of dividing this land into parcels or units for sale?

A. Yes.

Q. Just state to the jury generally what you did in that regard?

A. Do you mean in regard to dividing the entire tract into its various units?

Q. Yes.

A. (Continuing) Or into its various acre tracts?

Q. No, into its units.

A. I had a map prepared by a Mr. Payne, taking in the entire tract according to the legal description contained in the option contract between Slack and myself, which was divided into acre tracts and I had those maps made on linen; they were approximately nine feet long by maybe three feet in width; I had one made for the sales manager's room, one made for the outer office, one made for my private office, and I took a colored crayon and colored the southern half in pale green, containing between six and seven acres, and marked on that Unit No. 1, put it in the sales manager's room, told him that as acre tracts were sold from that by the salesmen and the contracts turned in to him, he was to mark off, in red, the ones upon which contracts had been received.

Q. Now, with reference to this Unit No. 1—rather, let me ask you this question, first: Did you at any time authorize the sale of or know of the sale of any land not contained within Unit No. 1?

A. No.

(Testimony of J. W. Alford)

Q. Now, what land was embraced within Unit No. 1, relative to the option agreement you had procured from Mr. Slack.

A. The first, second and part of the third payment or releases.

Q. Do I understand by that, that Unit No. 1 contained the acres that you would receive from Slack upon the payment of the first, second and third payments, provided for in the option agreement of January 17, 1927?

A. Yes, sir.

Q. And no other land was ever sold but that?

A. No, sir.

Up to about the first week in April, 1927, I think there were approximately from sixty-eight to seventy-five salesmen in the junior and senior classes. Each salesman was told what specific acreage he should sell. A junior salesman was given forty acres, as embraced on one small plat, to sell, and senior salesmen were given anywhere from two to five 40 acre tracts, scattered in different sections of Unit No. 1. No two salesmen were knowingly given the same plat or acres to sell. We were explicit in our statements to salesmen that to avoid confusion we had devised that particular method of handing out the acreage, so that there would be no confliction of one salesman selling an acre to one person, and a salesman in another part of town selling the same acre to another person.

I recall an incident when either Mr. Broadhead or Mr. Hudson brought to my attention that a salesman wanted to sell acres in a checkerboard fashion over the entire thirty thousand acres to one particular purchaser. I told Mr. Boradhead or Mr. Hudson—I don't know which one

(Testimony of J. W. Alford)

it was that I told—that we could not sell property in that manner, for it was not in the chronological order of the release of my option to purchase; that we were only selling land in the first unit, to which I could deliver a deed when the time payment contracts were completed, and I very explicitly impressed it upon him to so impress the rest of the sales force.

I believe that I did have a discussion with some salesman relative to what the approximate cost of drilling a well in Oklahoma was, I couldn't recall whether this salesman was Mr. Brubaker or not. I think that either the next morning or the same afternoon that I received the warranty deed from Mr. Slack that I mentioned to ten or twelve salesmen congregated in the office that I had received the deed from Oklahoma and I mentioned specifically a warranty deed, to the first release under my option contract, containing 1680 acres. I think the warranty deed remained in the salesroom for possibly three or four days. I think one of the salesmen took it and kept it for a couple of days.

I never saw the carbon copy of the letter addressed to Mr. C. O. Davis, which is Government's Exhibit No. 16, nor the original of that letter before. I saw it for the first time in the court room the other day. Mr. Broadhead never, at any time while in my employ, submitted to me a long hand draft of a letter to be sent to Mr. C. O. Davis. Mr. Brubaker never, at any time, showed me this particular carbon copy or one similar to it, of a letter to Mr. C. O. Davis. Neither Mr. Broadhead nor Mr. Brubaker, at any time, ever showed me any writings in long hand or in the form of a carbon copy

(Testimony of J. W. Alford)

of a letter, or of an original letter, which contained any statements contained in Government's Exhibit No. 16, to the effect "As showing good faith and confidence in their own proposition, the J. W. Alford Company, is expending at least $300,000 of their own money in three deep test wells, which certainly show the sincerity, very refreshing in these days of fake and sham." I never read that expression or ever heard it used in my organization.

I never had any conversation with Mr. Brubaker in which I stated to him that 1680 acres of the land in Cimarron County, Oklahoma had been purchased and paid for, and that 1680 acres were what the salesmen were selling. I never made any statements to Mr. Brubaker or to Mr. Broadhead or Mr. Bradley or to Mr. Jackson, or to any other salesman, or person connected with my organization, that the salesmen were only selling acreage that I had paid for and which had been released to me. I never told the salesmen anything particularly regarding the specific clauses in my contract of purchase, other than that I had a contract of purchase and that it called for so many payments, and upon those payments the release of so much acreage. I never told them that any particular amount had been released and that they were only selling that. I don't think I ever personally discussed with any of the salesmen just exactly what acreage they were selling, other than that they were selling in Unit No. 1. I may have discussed with Mr. Jackson or Mr. Broadhead the various payments and the payment dates. I know once I did tell the sales force that my second payment was due in April and that they had to hustle if they were going to help me meet it.

(Testimony of J. W. Alford)

Q. Did you tell your salesmen anything relative to the fact that the land they were selling was land that deed could be given for?

A. Oh, yes, I always told them all—

Q. Now, what did you tell them about that?

A. I told them that I did not wish to sell any of that property on a cash basis; that that was why I designed my contracts on the 40 per cent down payment; that would take care of their commission, and the 10 per cent a month payment, so when those contracts were paid up I would be in a position to deliver a deed to any part of that Unit No. 1, covered by my option agreement.

I did not tell Cameron Bradley in the first part of February, 1927, that I had bought a little in excess of thirty thousand acres of land in Cimarron County, Oklahoma, nor did I ever tell that to Mr. Bradley or any one else at any other time. During the months of January and February, 1927, so far as I know, Mr. Cameron Bradley had no knowledge of my personal funds. I never at any time told Mr. Bradley or Mr. Broadhead or Mr. Brubaker that I was then drilling wells on this land in Oklahoma, nor did I ever make that statement to any one connected with my organization or to any of the salesmen. I told them on several occasions that it was my intention to drill three wells on that tract and fully develop it; that it was my plan to develop three 1000 acre tracts, which I intended to hold for myself.

Mr. J. O. Carter was an oil man. He was in my employ as superintendent of operations in Oklahoma. He entered my employ while I had this acreage on the market. He went to Boise City, Oklahoma under my directions

(Testimony of J. W. Alford)

and at my suggestion. My instructions to him were to go to Boise City to look into the water situation there, because you have to have water for your boilers and drilling operations; that he was to find out what it would cost to build a derrick, a wooden derrick in that locality, where he would have to get his supplies from to drill it; to interview several well contractors in regard to their prices on a turn-key job or contract basis for drilling wells; I also gave him a letter of introduction to the manager of the Oil Well Supply Company branch in Amarillo, Texas, to find out the approximate cost of drilling equipment, if we did our own drilling, that, is a string of tools, casings, boilers, tankage, water pipes; told him to get in touch with some oil company and find out what it would cost to spot cars of crude oil for fuel purposes into Boise City, which was on a branch line; also told him to interview Mr. French, the brother who was the geologist, and an engineer and a surveyor; go out and see what part of the structure that ran through the southern half of that property was the best spot on which to spot the first well, or the location for the first well. And I think those were all—and report to me. I think those were all the instructions that I gave to Mr. Carter. As near as I can recall it Mr. Carter left for Boise City on March 6th or 7th, 1927, and he reported to me from time to time from Oklahoma. He was in Boise City constantly from sometime around the 10th or 12th of March, 1927, until the latter part of May, 1927.

I never at any time had a conversation with Mr. Bradley relative to the post office authorities in which I told Mr. Bradley that if he made certain entries, or any entry,

(Testimony of Stuart D. Anderson)

in my books, under my directions, that I would take the responsibility for it so far as the post office authorities were concerned. I never made such a statement to any one.

(Thereupon an adjournment was taken until Tuesday, July 30th, 1929, at 9:30 o'clock A. M., at which time the trial was resumed, and the following proceedings had.)

TESTIMONY OF STUART D. ANDERSON FOR THE DEFENDANT.

Stuart D. Anderson produced as a witness, out of order, on behalf of the defendant, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION.

(BY MR. FRIEDMAN)

I reside at 200 North Avenue 55, Los Angeles. I am an attorney at law and have been such for the past six years, and in 1927 my practice was in the City of Los Angeles.

On or about the 9th day of May, 1927, Mr. Alford had me prepare in my professional capacity a form of release. I have here the original release that I prepared at that time under his direction. Following the preparation of this release Mr. Alford and I went to the office of Mr. Forrest, and at Mr. Forrest's office met J. St. Paul White. I do not recall whether this was on the same day or the day following the preparation of the release. I believe it was on the same day. It has been a couple of years ago and I do not remember all the details. Mr. Alford and I reached Mr. Forrest's office first and we waited a few minutes and Mr. J. St. Paul White and

(Testimony of Stuart D. Anderson)

Mr. Forrest came in. Upon their arrival we went into conference in Mr. Forrest's office, no one else was present but the four parties I have named.

Q. Now, will you just state what your best recollection is at this time as to what occurred on that occasion.

A. Mr. Alford stated to Mr. St. Paul White and to Mr. Forrest that he had had this release prepared by me and that he had signed it and presented it to Mr. White for his signature. Mr. White and Mr. Forrest went over and discussed it at some length, and then he refused to sign it; Mr. St. Paul White refusing to sign it.

Q. Do you recall at that time any statements made by Mr. White as to why he would not sign it?

A. Well, Mr. White, in the course of this dickering that took place, he asked Mr. Alford to give him several more sections of land; I don't recall at this time exactly how much, but I know there was a demand made upon Mr. Alford for the giving to Mr. White of some additional sections of land, which he refused. I also remember that Mr. Alford said to Mr. White that he knew the expenses he had been to in the preparation of this project; outlined the various amounts that he had expended; told St. Paul White that it was a rather late hour for him to make this unreasonable demand. That is about the substance of it. Mr. Alford refused, and we left the room. I went on up to the court house and I don't know where else we went.

There is my notarial acknowledgment on the document. I acknowledged Mr. Alford's signature as he executed it in my office. All I have testified to occurred here in Los Angeles.

(Testimony of J. W. Alford)

(The release testified to by the witness was offered in evidence, admitted and marked Defendant's Exhibit X.)

I am also a notary public and was at that time.

CROSS EXAMINATION

(BY MR. ARMSTRONG)

This release, since the time I showed it to Mr. White, has been in my office, together with all copies thereof. After that conference in which Mr. White refused to execute it on his part, I kept the release and have retained it in my office ever since. I do not recall whatever else transpired in Mr. Alford's relations with Mr. White. To my knowledge Mr. White did not, within one or two days after May 9th, tell Mr. Alford that he would withdraw any demand for any additional land and would sign the release whenever it was presented to Mr. White. No such facts were ever communicated to Mr. Alford in my presence.

REDIRECT EXAMINATION.

The reason I retained the original release in my possession was that Mr. Alford executed it in my office and I went with him to Mr. St. Paul White's office for the purpose of obtaining his acknowledgment. When he declined to sign it, I retained the original in my file.

TESTIMONY OF J. W. ALFORD RESUMED.

J. W. Alford

resumed the stand and testified in substance as follows:

CROSS EXAMINATION.

(BY MR. ARMSTRONG):

During all the time I was purchasing and selling this land in question, I never knowingly intended to misrepre-

(Testimony of J. W. Alford)

sent any matter or thing in connection with the purchase and sale of that land. At the time I went to Mr. Slack in January and prior to the signing of the contract, which is Government's Exhibit No. 1, I told Mr. Slack it was my intention to divide this tract into three units of approximately 10,000 acres each, and that I intended to divide each unit into sections of one acre each and intended to sell this land to the public at $100. an acre, and that I intended to locate a 1000 acre tract in each of these three units, and that it was my intention to drill a well in one of these 1000 acre tracts. I expected to get the money to exercise the option on the first unit from my personal resources, and friends and acquaintances who were financially able to advance it. I did not intend to get the money to exercise the option on the first unit from the sale of land to the public. I do not recall that I ever went into detail with my salesmen to the effect that I had to sell an acre before I could pay for that particular acre. I do not believe I ever mentioned anything to Mr. White regarding his financing the project before the 5th and 10th of February, 1927. That was not the first time that I got any one to evidence sufficient interest in the project to close them. No one particular individual evidenced sufficient interest to the extent they were ready to go ahead and close the deal, but several particular individuals in smaller amounts. I expected to get the money with which to drill the oil wells from sales of the property. I do not think I ever had any direct talk with the individual salesmen as to what they should tell the purchasers in regard to the drilling of oil wells. I had several salesmen and Mr Broadhead and Mr. Hudson covered that; but I told

(Testimony of J. W. Alford)

them that the plans naturally were predicated upon the activity over there, upon the population coming in and the boom. I had several plans for developing that property. I addressed the salesmen sometimes myself at the sales meetings and I discussed in a way with them what my plans were in connection with the drilling of oil wells.

Q. Let us just get to this one point. You recollect what you stated to the salesmen at these sales meetings in connection with the drilling of oil wells, where the money was to come from?

A. Yes.

Q. What did you say?

A. I think on one occasion I addressed a sales meeting in which I told them of my desire and plan to drill a well either in Section 21 or 22, which was to be the first well, and that the amount of sales, and the rapidity with which they were made, would go a long way towards defraying the cost of that well. I think I even went so far as to tell them that the cost of a wild-cat well, or a well in non-proven territory, I should say, was pretty hard to determine. That if you were lucky you could get it done for forty-five or fifty thousand dollars, but if you were unlucky it would cost a quarter of a million.

Q. When did you make that statement?

A. I think that statement was made some time in the latter part of February.

Q. The latter part of February?

A. I would not say for sure.

At that time I had sufficient money in sight to meet the first payment. I had an amount equivalent to $25,000 or $26,000 in sight from various of my friends in two thou-

(Testimony of J. W. Alford)

sand and one thousand amounts. These people were Mrs. de Valye, Mr. Wayne Casady, Mr. W. S. Kline, Mrs. Ward, Mr. Hauschild, Mr. R. V. Jones and Mr. M. Petz. I do not recall all of the names. I had practically all of the money to meet the first payment in sight before I ever went to Mr. White. I stated that I made the statement to the salesmen regarding the drilling of a well in the latter part of February, and the first payment was made February 17th, 1927. At the time I made the statement to the salesmen, I could have made this purchase of the 1680 acres. I used my money to defray cost of literature and sales expenses in getting under way. It was quite an expense. Not all of this was between January 17th and February 17th, 1927. At the time I first went to Mr. White I had approximately $16,000 in my possession.

Q. Where were you going to get the money? It would take $32,400. more to meet the second payment; you had to pay Mr. White back $25,200. That would approximate $54,000. Where did you expect to get the money to drill those wells?

A. From sales of the property. I never had to pay Mr. White back at any specific time. I do not think my contract states that.

I never instructed the salesmen to state that we were going to drill immediately, or to name any specific date. The drilling depended more or less on the success of my plan, and my ability to finance it.

EXCEPTION NO. 27.

Q. Now, Mr. Alford, I show you this map, Government's Exhibit No. 20. As I understand it, you made that map, or at least you made the original from which—

(Testimony of J. W. Alford)

MR. FRIEDMAN: That is objected to on the ground that it is not proper cross-examination.

MR. ARMSTRONG: You did not go into that on direct, but the defendant on his direct examination opened the field wide, as I understand it, by going into the question of good faith.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

(Question read.)

Q. BY MR. ARMSTRONG: The original from which that was made?

A. I compiled the rough draft of this map from newspaper—

Q. Just a moment.

A. Have you asked me a yes or no question?

Q. Yes.

A. The answer is yes.

Q. On the original that you drew, of which I take it this is a copy, did you place all of these derricks on the map?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Did you place that Mercury Oil Company in the middle of the land on that map?

A. Yes, sir.

Q. Now, just what did you think, when you made that map, that the salesmen would think and what prospective purchasers would think, when they saw a map of that kind showing drilling activities all through there, and with reference to possible drilling activities on that land?

(Testimony of J. W. Alford)

MR. FRIEDMAN: I object to the question as being incompetent, irrelevant and immaterial and not proper cross-examination—what he thought or did not think or what somebody else would think. That certainly is a far-fetched conclusion.

THE COURT: Yes. I think that is objectionable. He might ask him what he did.

Q. BY MR. ARMSTRONG: Mr. Alford, what was your idea in putting these derricks on that map?

A. May I explain that in my own words?

Q. Yes.

A. I drew it, or rather, I compiled it from data which I had at hand, including other maps, with a general idea of showing the development of activity in the whole Panhandle area. This map is a map of the Panhandle area; it includes part of Colorado, part of Kansas, part of Oklahoma and part of Texas. It was drawn with that purpose in mind, to show the activities and proposed activities in regard to drilling, as I had no way of determining about each producing well. I did not put that on. It was just something for the salesmen to carry to show that activity in Cimarron County, Oklahoma.

Q. Why did you put those derricks there?

A. To show the drilling activity and the proposed drilling activity in the known fields. I showed known fields on it with dots, because there were too many wells to spot with a derrick. The known fields, producing fields, are shown with small dots, and the location of drilling wells and proposed wells, gas wells, were shown with derricks, as near as I could possibly get the data.

Q. Why did you show all those three different classifications by derricks?

(Testimony of J. W. Alford)

A. I knew of no other way of showing them, of showing by a picture map, a bird's eye view map, except by derricks.

Q. You have a legend on there?

A. I was very specific to see that that legend went on it to state how many drilling wells were in Cimarron County.

Q. Couldn't you have divided that one classification up into three classifications?

MR. FRIEDMAN: I object to it, what the witness could have done. It is only material what he did do.

Q. BY MR. ARMSTRONG: All right. Now, with reference to this Mercury Oil Corporation, just what was that.

A. The Mercury Oil Company was a name that Mr. Carter and I decided to carry on our drilling operations under in Oklahoma State.

Q. That, as I understand it, was just a name which you two individuals used?

A. Yes, we proposed to use it and we did use it.

Q. Was that a corporation?

A. No.

Q. If you will notice on the legend Mr. Alford, it states, "Mercury Oil Corp." What was your object in putting that there?

A. I could not say. That is probably an error by the draftsman who drew it.

Q. That was not on the original, I suppose?

A. What is that?

Q. That was not on the original?

A. No, I do not think so.

(Testimony of J. W. Alford)

Q. You would not do that?

A. I do not think I would do it. I might have made a mistake and done that, but I do not remember doing it, because it was not a corporation.

Q. Now, you say that you did not know in the latter part of February just when you were going to drill this well?

A. No; I did not know exactly when I was going to drill it.

Q. Why did you put this derrick and Mercury Oil Company on that map right in the center of the Panhandle Petroleum Acres?

A. Well, I do not believe that it is in the center.

Q. Well, wherever it is.

A. I put it approximately where I expected to drill that first well, which is practically on a line between Sections 21 and 22, which would be embraced in my second release.

I cannot recall the exact date Mr. Carter went to Oklahoma, but, as near as I can place it, it was March 5th or 6th, may be it was the 7th of March, 1927. This map was prepared sometime before that; after my inspection of the property. I made this location of the proposed well with the assistance of Mr. French, the geologist over there, who pointed out the approximate spot where the well should be drilled. He was pretty familiar with that ranch. He thought a well spotted beween Sections 21 and 22 would be all right, and that is why I put it approximately there. It is not located exactly, that is, in connection with the acres, where it should be. It should be a little further to the west. The derrick on there gives the general idea

(Testimony of J. W. Alford)

that somewhere in the southern part of that thirty thousand acres was to be the location of that well; that is what it was designed for.

I had several pictures taken of Mr. Carter beside a Dodge automobile

Early in February I went to Mr. White and put a proposition up to him, and he at that time stated that he would be willing to help with the first two payments. We had a very definite understanding regarding the first payment and an understanding that some substantial part, if not all of the second payment, would be made by him. I suggested some amendments to the contract I signed with Mr. White, dated February 14th, 1927. I read that contract over on the train thoroughly and understood what it meant. I thought we would possibly derive a substantial part of the second payment from sales, and I so told Mr. White. I do not recall of ever making a statement to Mr. White to the effect that there would not be any necessity for him to even think about the second payment, or that this thing was going over so big that all that was necessary was for him to put up that first payment and everything would be all right. I might have said that the sales were going in good shape, and from that time on they should move rapidly, but to definitely state that he would never have to make another move, and that I would give him a half interest in the contract that was worth more than that to me than the amount I was asking him for, and I also assigned him a deed for 1680 acres—I think that is preposterous.

I did not draw the contract with Mr. White, but I understood its terms in a general way, of course. I could

(Testimony of J. W. Alford)

not possibly have made a statement to Mr. White that from the sale of land there would be ample funds to meet the disposition of this contract as there was no way to determine it. I do not recall at the present time in reading the contract whether I even thought about a provision being in there for Mr. White to supply the funds to help me meet the second payment. I had implicit confidence in Mr. White and his word to me. I would have gone on that without a contract.

This picture of Mr. Carter, which is Government's Exhibit 22, was taken on March 5th or 6th, maybe a little earlier than that; but it was right after the car was purchased. I think it was taken on Mesa Drive in Los Angeles. One of Mr. Carter's instructions in going to Oklahoma was to make inquiry as to how much it would cost to get a well started.

I instructed him to look over the water situation, to see if there was a water well near, or perhaps a location where they could get water. I instructed him to go to Amarillo to find out the cost of the equipment and shipping it in there, and to make arrangements for crude oil for fuel; I instructed him to call on Mr. French, the geologist, and have him set the exact location of that well so that I could put it on my future maps, and to make a survey of that and establish it exactly. And I wanted his opinion on the structural condition there, because he is more or less of a practical geologist himself.

Q. At that time you did not have any present intention of drilling a well, did you?

A. Present intention?

Q. Yes, at that time.

(Testimony of J. W. Alford)

A. I should say I did.

Q. Oh, you did?

A. Yes.

Q. Where were you to get the money to drill that with?

A. I think I explained that in my former testimony.

Q. But at that time you had a present intention of drilling a well?

A. I had the intention of drilling three wells. I had a very full intention.

Q. An immediate intention?

A. No, sir, not an immediate intention, but as quickly as I could. Let us put it in that way. As quickly as I could I had an intention of drilling three wells.

Q. How soon?

A. As quickly as I could get the money to finance them.

I would have to go over my personal account and the Company account to determine how much money I had at that time. My credit was pretty good at that time. I had the words "Production Department" painted on that car because we were going to use that for a tool car back and forth between Amarillo, Texas and the acreage and location of the well, and rather than have that car go there with nothing on it, I wanted to acquaint the rest of the operators with the fact that we were getting read*o* to do some development up there, and I put that on there, "J. W. Alford & Co, Production Department, Los Angeles, California."

I could not say that it would be quite sometime after that before I would do any producing as I had an interest in production down at Signal Hill at that time.

(Testimony of J. W. Alford)

I do not know whether I gave that photograph out to any salesmen or not. I think there were four or five of those pictures printed. Yet, if I had a lot of them printed I would have turned them over to the sales force, as they would show the preparations that were being made.

I first saw Defendant's Exhibit G, the second contract, dated February 14th, 1927, approximately at 7:30 o'clock on April 17th, 1927, for the first time. It is not a fact that I saw this document for the first time about the middle of March, 1927. It is not a fact that along about the middle of March, 1927, I saw Mr. White and asked him if he would make the second payment and Mr. White said, "I might, but if I do I will have to have a new contract." A new contract was never mentioned. It was the middle part of March when Mr. White voluntarily told me that he would make the second payment, or a substantial part of it. This second contract is stringent in its terms for the following reasons:

Under this contract I agreed to give Mr. White all of the property, all of my entire interest in the option, and I would have to go ahead and drill three wells over there at my own expense, and make all future payments on this property for his benefit, and then if I was successful and there was any net profit he would get half of it. I remember telling Mr. White at the time the second contract was discussed that five minutes after I signed it I would be in default of it, because it could not possibly be performed. The reason it could not be performed can be shown from a perusal of it. It is not a fact that at no time did Mr. White tell me he would make the second payment, or a substantial part of it. It is a fact that he did tell me he

(Testimony of J. W. Alford)

would make the second payment, or a substantial part of it. Mr. White did not positively refuse to make any part of the second payment until the day that the contract was due or the day before. There were many conversations I had with Mr. White over that period of time, but as near as I can remember it he carried me right down to the last minute.

The first payment was carried in cash from Los Angeles to Boise City and we had to travel somewhere around fifty miles by automobile, for the reason that the Southern Pacific, or the Rock Island, as it is when it reaches Texoma, which is the closest point to Los Angeles by railroad unless you go to Hutchinson, Kansas and come back on the Rock Island, which comes down through Boise City. When we arrived Mr. Slack was at the bank. I wouldn't say the door was wide open, but the shades were up and the lights were all on. When I said the door was wide open I meant that he was waiting there for me and he kind of gave me the impression, with two witnesses there, that there would be no payment accepted if we were not on time. The door was closed. It was so cold they had to have it closed.

With reference to this release, Mr. White did not shortly after May 9th, or up to this time, tell me that he would withdraw his demand for a section of land and sign the release if I would bring it to him. I think I approached Mr. White concerning this release practically every day or every other day after May 9th, 1927, up and to the latter part of May. I do not think I had the release with me, though I might have had it in my pocket.

(Testimony of J. W. Alford)

Mr. White did not tell me around the middle of April that I had better let this proposition go and that he would be willing to give the people who had bought their tracts an acre of this land provided I would pay him $35. an acre for it. There was never such a conversation, or anything like it, held. At that time I had sold only between 30 and 40 acres of that 1680 acres.

I did not authorize my agents to represent to the people, to whom they were selling this land, that they were only selling land that I actually owned. I never knew that they were making such statements, except on one occasion, when the fact that such a statement was made was called to my attention by a salesman, I do not recall his name, or I believe there were two of them, that my sales manager, Mr. Broadhead, had addressed a meeting that morning and told them that we owned the land, and I immediately went out and corrected the impression. I have never made any representations at any sales meeting that the salesmen were only selling land that I actually owned.

When I received the deed to 1680 acres from Mr. Slack, I kept it in my office about a week or maybe longer. I showed it to a few of the salesmen and left it back in the salesroom with Mr. Jackson and I think one of the salesmen took it to show his prospect that he was attempting to close. I showed the deed to the salesmen just to let them know that the first payment under the option contract, which had been published in the paper, had been made. I concluded that I had an equitable interest in the property from the time I signed the contract and so had a perfect right to sell it.

(Testimony of J. W. Alford)

I do not recall ever having had a conversation with Mrs. Stromberg during March, 1927, in which I showed her the deed and told her her land was in that deed. I do not think that matter was ever discussed with Mrs. Stromberg, and do not remember that that matter was ever mentioned.

Q. You never showed her the deed?

A. Will you state what time the conversation was with Mrs. Stromberg?

Q. Yes, March 23, 1927.

A. I could not have showed it to her. It was in Mr. White's possession.

The reason that money was placed in a bank account under the name of Cameron Bradley, Trustee, was that I was at the office here considerably, and making trips back and forth, and the salesmen, when they brought in contracts liked to get their money on them, and I have always had the custom of paying commissions as quickly as a check would clear or, if it was cash, immediately; but I could not be there, it wasn't a corporation, there had to be some provision made so that these commissions and other little incidental expenses could be paid and I opened a small account in the name of Cameron Bradley, Trustee, in the Pacific-Southwest Trust & Savings Bank and I opened that account with the sum of four or five hundred dollars, if I remember correctly, with money drawn from my account.

Q. When did you finally determine that you were not going to be able to give these people a deed to the property which they had paid for?

A. I have not determined that until this day.

(Testimony of J. W. Alford)

Q. This is the first time you have determined it?

A. I have not determined it yet. The property is still there.

Q. It is still there?

A. Yes.

Q. You thought you might be able to go out and buy for these people the acres that they had purchased?

A. I think I could to-day, yes.

Q. That is the reason you never at any time told them and the reason you decided not to go on with the proposition was not because you could not deliver deeds or because the oil possibilities in that vicinity had not been what you had hoped them to be?

MR. FRIEDMAN: Your Honor, I am going to object to the question as improper cross-examination. There was nothing touched upon on direct examination regarding any conversations had with any person who had bought property.

THE COURT: I will overrule the objection.

A. There were two reasons, Mr. Armstrong, why I concluded that I would not go ahead with that project. One of them was that I could not get a release signed by Mr. White, which would permit me to make the first payment of $6400, I think it was, under my new contract; the second one was in my opinion it would be practically impossible to finance the project of that character, due to the fact that the oil excitement had died down considerable since February. Those two reasons in conjunction with each other convinced me that a project of that magnitude could not be developed economically or profitably, neither could it be sold because we had nothing with which to sell

(Testimony of J. W. Alford)

it, and it would be foolish for me to expend any moneys received from the sale, or from loans in drilling wells to determine something that had already been determined by other wells abandoned in the neighborhood.

Q. In reality, on June 1, 1927, the second contract had lapsed, had it not?

A. I do not think that would lapse until June 3, 1927.

Q. Well, June 3rd.

A. Yes.

EXCEPTION NO. 28.

Q. I show you Government's Exhibit 67, and will ask you if that is a letter you wrote?

A. Yes, I wrote that.

Q. You knew at that time that people were still making payments on their contracts?

MR. FRIEDMAN: That is objected to on the grounds it is incompetent, irrelevant and immaterial and not proper cross-examination.

THE COURT: Let me see that exhibit (Handing paper to court)

MR. FRIEDMAN: That is a letter written to Mr. Stromberg, which speaks for itself, as to what was stated in the letter. What he knew about anybody else doing or not doing at that time certainly has no bearing on this particular document.

THE COURT: The objection is overruled. What is the number of that?

MR. ARMSTRONG: It is Government's Exhibit 67, your Honor.

MR. FRIEDMAN: Your Honor overruled the objection?

(Testimony of J. W. Alford)

THE COURT: Yes.

MR. FRIEDMAN: I desire to note an exception.

(Question read.)

A. Yes, I knew it.

Q. BY MR. ARMSTRONG: In this letter you make this statement: "In this connection, I wish to state that at the time I purchased part of this ranch and contracted to purchase the balance"—Just what did you mean by that?

A. I meant I purchased and paid for 1680 acres and my contract covered the purchase of the balance of it.

Q. Did you feel that you owned 1680 acres of that land?

A. I figure to this day that I own half an interest in that 1680 acres of land and I am suing for it in Oklahoma today.

Q. Notwithstanding the fact that by this deed, dated the 1st day of March, 1927, you transferred the property to Mr. White?

A. I did, for his protection, my client's protection and for my protection, and it so states in the contract.

Q. According to the terms of the contract?

A. Yes.

Q. You say: "It has always been my policy to fully protect such clients who back my knowledge, experience and integrity. Therefore, when this particular piece of property failed to measure up to my expectations and the representations made concerning same, I concluded that something which was not good enough for me was certainely not good enough to pass on to my friends and clients." And further, "In the event you still desire to

(Testimony of J. W. Alford)

own some of this land, I would respectfully refer you to Guy William Slack of Boise City, Oklahoma, the owner and with whom I cancelled my contract to purchase this land. I feel sure that he will be glad to sell you at a price of around $20 per acre."

A JUROR: What is the date of that letter?

MR. ARMSTRONG: July 28, 1927.

MR. FRIEDMAN: Was that last reading a question or were you just reading from the letter?

MR. ARMSTRONG: I was reading from the letter.

EXCEPTION NO. 29.

Q. BY MR. ARMSTRONG: You did not advise Mr. McNeill that you had cancelled your contract to purchase this land, did you?

MR. FRIEDMAN: Just a moment. I object to that on the ground that it is not proper cross-examination. If there is any correspondence in evidence between this witness and McNeill, it speaks for itself.

MR. ARMSTRONG: I refer to Government's Exhibits 39 and 40.

THE COURT: I will overrule the objection.

Q. BY MR. ARMSTRONG: Did you tell Mr. McNeill that?

MR. FRIEDMAN: It is objected to again, your Honor, on the ground that notwithstanding the witness is being shown some letter that it is improper cross-examination.

THE COURT: Where a question covers one of the material elements where the defendant denies any wrongful intent, cross-examination is very liberal, more liberal than otherwise.

(Testimony of J. W. Alford)

MR. FRIEDMAN: That is true, your Honor, nevertheless cross-examination must be confined to those things which were developed on direct examination. Counsel is now going into matters that occurred long subsequent to anything touched upon in the direct examination.

THE COURT: All that was introduced by the defendant in his testimony with reference to the subject can be rebutted by the Government, if the Government can do it.

MR. FRIEDMAN: That is true; but whether it can be rebutted or whether the defendant can be cross-examined on it, are two different things.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

THE WITNESS: I wrote both of those letters.

Q. BY MR. ARMSTRONG: I did not ask you that.

A. What was it?

Q. Did you tell Mr. McNeill, at the time he was making his payment, after July, that you had cancelled your contract with Mr. Slack?

A. I wrote him the same form letter that I wrote to all of the people.

Q. And told him that you had cancelled your contract?

A. That I had concluded to abandon the project in its entirety.

Q. And he sent his payments just the same?

A. Yes, sir.

Q. What is the date of that letter?

A. I do not recall the date of that letter, but the early part of July or the latter part of June, or the middle of June.

(Testimony of J. W. Alford)

Q. Was it a letter similar to the letter you wrote to Mr. Stromberg?

A. Somewhat similar, yes. I would say it was practically identically the same with the exception of one or two personal matters in it regarding the amounts and the number of acres.

Q. Notwithstanding that, you wrote him on July 22, 1927, and I am reading from Government's Exhibit 40, "I am indeed sorry that this confusion has arisen and trust that this communication will adjust matters to your entire satisfaction, and I herewith acknowledge receipt from you of the total sum of $160, leaving a balance of $40 due in installments of $20 on August 19th and September 19, 1927."

A. May I look at that a moment?

Q. You certainly may.

A. Then can I explain it after I read it?

Q. Yes.

A. I had found in checking over the bookkeeping, the records of my bookkeeper, that Mr. McNeill had not made certain payments in his contract, that is, after he had refused to accept his money back—he had his own idea regarding the value of the property—I found that my bookkeeper had stolen that amount of money, or rather, that particular payment—

EXCEPTION NO. 30.

Q. BY MR. ARMSTRONG: I show you a letter, Government's Exhibit 67, and ask you if you wrote a similar letter to Mr. McNeill?

(Testimony of J. W. Alford)

MR. FRIEDMAN: Objected to on the grounds it is incompetent, irrelevant and immaterial and not proper cross-examination.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

A. I would say that I did.

Q. You did?

A. Yes, sir.

Q. Would you say that it was before or after?

A. That I would not say.

Q. You would not say?

A. No, I cannot say.

Prior to April 17th, 1927, I was under the impression from what Mr. White told me that Mr. White was going to make the second payment, or a substantial part of it, and I was not making any effort to raise this money from any other private source. I did not go to Mr. A. E. Parkford and ask him if he would put it up. Mr. White suggested that we both go to Mr. Parkford of the Pacific Mutual to see if I would not give up part of my half and he give up part of his half to him to put up the money, when he was having a hard time to get his wife to sign the mortgage. White had told Mr. Parkford about it before. I have talked with Mr. Gordon. When I came from Mr. Parkford's office I dropped by and talked with Mr. Gordon. I could not give you the date. It was somewhere around the time Mr. White told me he was having a hard time raising the money. I relied upon Mr. White giving a part of his interest, along with me, if we had to get it from some outside source.

(Testimony of J. W. Alford)

I would not say that I ever called on Mr. White prior to April 17, 1927, and asked him to release his interest in the contract. I can state positively that I never called Mr. White up prior to April 17th and asked him if he would release his interest in the contract.

On or about March 29th, 1928, I gave Adda McKean 120 shares of the Capital Stock of J. W. Alford & Co. Inc.

Q. BY MR. ARMSTRONG: Mr. Alford, I call your attention to Government's Exhibit 32, which states in the body of the instrument, with reference to a description of property located in the County of Cimarron, State of Oklahoma, being part of the subdivision officially known as the Panhandle Petroleum Acres, as shown by map on file in the office of the County Recorder, Cimarron County, Oklahoma. Was that map ever on file in the County Recorder's office of Cimarron County, Oklahoma?

A. No, sir. A copy was left over there. That was one of the early confirmations, one of the early contracts, and there was a mistake made by the printer, Mr. James J. Dee. He printed that and made it appear as of record, and we had to change it later in the new contract to read "To be filed."

With reference to the map, Government's Exhibit 20, this map shows there were four different companies, the Sinclair Oil Company, the Ramsey Oil Company, the Phillips Oil Company, and two other companies in Cimarron County, Oklahoma, as having wells *wells* drilling. The map means that the Sinclair Oil Company has one well drilling, the Ramsey Oil Company three wells drilling. This information was compiled from newspaper data fur-

(Testimony of J. W. Alford)

nished us. I had been over this territory twice and I did not see where there were three separate wells. I do not remember the date that map was made, so I cannot positively answer the question as to whether Mr. Jackson was wrong when he testified that there was one well drilling and the other two were merely locations.

REDIRECT EXAMINATION.

BY MR. FRIEDMAN:

I would state that it is a fact that the first time I saw the second contract that Mr. White submitted to me was about 7 or 7:30 in the evening. If I remember correctly I was at home when the telephone rang. It seems to me that it was a holiday of some character. I called the Western Union office to determine if they would wire money on a holiday. I believe it was Easter Sunday, or the day before Easter Sunday, that this phone call came, because I remember now it spoiled my holiday. I think it was the day before Easter Sunday that Mr. White gave me this contract, but I cannot be absolutely sure. The question in my mind is as to whether I got it that evening or whether I went to his office on Easter Sunday at noon to get it. My best recollection is that it was Easter Sunday or the evening before Easter Sunday.

Cameron Bradley was my bookkeeper during all of this time. During all of this period of time Mr. White knew that there was no account in the name of J. St. Paul White, Trustee.

(In reply to questions asked by jurors, the witness testified in substance as follows:)

The first sale of this property, as I recall it, I made myself and the second sale I made myself, purely to show

(Testimony of J. W. Alford)

the men that it could be done, and it was made on the 8th day of February, 1927.

If a salesman had brought in a full payment on a contract on property which I had paid for I would have accepted it, of course, but if it had been on property that I had an option on, I would have stood on my contract. The contracts were designed for that purpose. I think several payments were made in full.

I received a warranty deed for the 1680 acres from Mr. Slack approximately four, five or six days after I arrived in Los Angeles from Boise City.

Q. THE JUROR: One of the salesmen testified that you came in on Wednesday and said, "Boys, this is all off". Several of them stated that they had some live prospects and wanted to continue until Saturday and you permitted it.

THE WITNESS: May I state just exactly as I remember about that?

THE JUROR: Yes, please.

THE WITNESS: At that particular time I had been riding the sales force regarding their salesmanship ability, that they spent more time trying to win the $5. bonus that I put up every morning for the best sales contract that was written on this project, and I said, "You fellows cannot sell it, the oil situation is changed and I am going to take it off the market in its entirety." I told them if we had any business pending—we were accustomed to taking contracts with a five dollar bill and a ten dollar bill and then turning that over to Jackson and holding them in the drawer until the 40 per cent was paid. Some of the contracts show $10 down and $20 in ten days and $30 in an-

(Testimony of J. W. Alford)

other ten days and so forth and I told them if they had any of that business to close it up by Saturday of that week because there would be no more sales thereafter.

Q. At that time, your option, because of the default of the second payment, had expired, had it not?

A. Well, technically, the option had expired, yes.

Q. Technically it had expired?

A. Yes, sir, but I had been negotiating with Mr. Slack and his telegrams led me to believe, in fact they stated, that there would be an extension granted me if I could get over there with a new contract.

Q. But you had accepted payments after the expiration of the contract due to default of the second payment, had you not?

A. Oh, yes.

I was perfectly familiar with every piece of literature that was placed upon the table in the salesmen's room, but as to what the salesmen carried in their kits, I was not familiar with. I never saw the documents introduced by the Government, which state about spending $300,000. I read the Panhandle Digest and I wrote the advertisement in it and clipped the clippings that made it up. I wrote the add as being my idea of what should be said in selling that project and told my sales manager to instruct the salesmen to build their sales talk from that.

When I first went into this matter I had approximately $15,000 of my own money. I expended all of it in this project and a little more that I borrowed. It was quite expensive to get a sales organization of that magnitude going and to advertise for salesmen. I had a suite of practically the entire front of the Lincoln Building and

(Testimony of J. St. Paul White)

part of the side. It was divided off into a big sales room, with the sales manager, and assistant sales manager and an instructor, and a secretary for them. Then my office force, bookkeeper, stenographer, and we had a switchboard for our telephone. It was quite expensive to get that under way. In fact expenses in getting that sales organization under way and functioning were practically as much as the first payment on the property. The rent at that time was $375. a month.

When Mr. Carter went to Oklahoma to investigate, he reported to me that the probable cost of a well in that formation would be around fifty to sixty-five thousand, if we carried it down to 4500 feet. I was planning to drill three wells, one after the other.

The first time I entered into the option with Mr. Slack we had a little discussion and his lawyers said it required something to be paid down and I believe I gave Mr. Slack a silver dollar and I believe he gave it back to me.

MR. FRIEDMAN: That is all. The defendant rests

TESTIMONY OF J. ST. PAUL WHITE for the UNITED STATES.

J. St. Paul White,

recalled as a witness on behalf of the United States, in rebuttal, having previously been sworn, testified in substance as follows:

DIRECT EXAMINATION.

BY MR. ARMSTRONG:

It was during the first week of February, prior to the 10th, that Mr. Alford first approached me concerning this

(Testimony of J. St. Paul White)

first payment of $25,200. At that time he did not tell me he had been negotiating with one or two parties in regard to financing him to the extent of $50,000. About that time I did not tell him I might be interested in helping him secure finances for the first two payments. During all of these conversations that took place in February I never told him I would be interested in making the second payment, or any part of it.

Q. At that particular time was anything discussed between you and Mr. Alford concerning the second payment?

A. Yes, sir.

Q. What was said about that?

A. Well, when I was considering whether or not I should go in for the first $25,000, he submitted an optional agreement to me which I read carefully. I was pretty much concerned about the second payment that was to fall due in 60 days, and if I was going into the extent of $25,200, I naturally wanted to know where that payment was coming from; and so I asked him about it. He was very sanguine about it, that if he could get started there wouldn't be any trouble about selling enough of the acreage, which we might then acquire, to make the second payment out of the proceeds from the sales of that acreage. I still wanted a little further demonstration, so he figured on it, just roughly, as we sat there. He was confident that he would sell on an average of a hundred acres a day and that those sales, which would come in before the second payment was due would be just about enough to make up the $32,400. I asked him how he figured on so much, which seemed to me a pretty large number of acres

(Testimony of J. St. Paul White)

a day, and he said, well, that after he got going he was going to put in a newspaper advertising campaign and that they would undoubtedly make sales of ten, forty and possibly a section at a time. Well, he convinced me of that.

Q. Did you at any time, during the course of those negotiations, tell Mr. Alford "Here is the first payment, there is plenty more where that came from?"

A. No, sir, because there was not.

My dealings with Mr. Alford, at all times, had not been profitable.

Q. Now, at Boise City, Oklahoma—I will withdraw that. Yes. At Boise City, Oklahoma, on the 17th or 18th of February, 1927, did you make this statement yourself, in the presence of Mr. Slack, after discussing the $25,200.00 in cash: "Mr. White told Mr. Slack that it was inconvenient to bring cash every time; that this time he had to go to the Federal Reserve Bank to get it and did not want to have to do that with an amount like $32,400 and wanted to know if a cashier's check on the National City Bank of Los Angeles would not be acceptable to Mr. Slack."

A. I did not make those statements. I permitted Mr. Alford to make them, however. Mr. Slack showed a disinclination to deal with me, and at one time he made the statement as to the contract being not with me, but with Mr. Alford, so that I really did not have a lot of conversation with Mr. Slack about the matter.

Q. And at the time did you or did you not have in mind a provision in the contract providing for the payment of $32,400?

A. Yes, sir, in speaking to Mr. Alford about it, I did.

(Testimony of J. St. Paul White)

Q. You spoke to Mr. Alford about it and not to Mr. Slack?

A. Yes.

I did not make the statement to Mr. Alford in the early part of March that he did not have to worry a great deal about the second payment; that I was perfectly willing to make a substantial part of the second payment, if not all of it.

Q. Did you make this statement to Mr. Slack, or rather, to Mr. Alford in Mr. Alford's office, or any other place, on April 7th, or about that time: "I suggested to him" (referring to you) "that he should go out and make arrangements for that payment, to take care of it, and he thought it would be a wise idea himself," saying that you thought it would be a wise idea yourself.

A. For me to get it?

Q. Yes.

A. No.

Q. You did not make such a statement and did not make such a reply to him?

A. No.

Q. He further testified that at that time and place you said: "Well, I am short of ready cash at this particular time and it means the placing of a mortgage on a flat that I own."

A. I do not recall any such statement.

Q. But that you would go out and make those arrangements immediately because it would take possibly four or five days to make the loan, and he left the office after that conversation?

A. No, I do not recall that.

(Testimony of J. St. Paul White)

Q. Then two or three days later Mr. Alford stopped at your office and asked you what progress you were making towards the loan and your reply was that everything was going along okay?

A. No, sir.

On the 14th or 15th of April Mr. Alford did not come to my office and did not tell me that he was ready to go to Oklahoma and that he would take the payment over with him and that there were one or two matters he wished to discuss with Mr. Carter and Mr. Slack and I did not say to him, ""Well, you know, John, I haven't got my wife to sign the mortgage and it looks like I am going to have a tough time with it." Mr. Alford did not say to me that it was pretty late to break that news and I did not tell him, "Don't give up hope." I did not at the same time and place tell him that I could put the deal over. From then on I saw Mr. Alford fairly frequently, but I wouldn't say it was in reference to a loan. I told Alford long before the day before the payment was due in Boise City, April 17th, 1927, that I could not make it. The first mention that was made by Alford relative to my making the second payment occurred some time between the 15th and 20th of March.

Q. What did you tell him at that time?

A. I told him that it was not part of our agreement and that it was new stuff to me; that I thought the payment was going to be made out of the sales. He said, "Well, we both knew that the sales were not going over well," and he said he thought it was likely he would have to raise money and asked me what I could do and I said that I did not know that I could do anything. He asked

(Testimony of J. St. Paul White)

me if I would not consider it and I said yes I would." He said at that time if I was able to make it, and decided to make it, that it would be necessary to redraw the contract. There were several reasons for that. In the first place the original contract stated nothing about the second payment, except that it should be raised from the money derived from the sales; another reason was that a default was looming under the first contract, which proposed that on March 28th he should pay me an amount equal to 5 per cent of the sales then made, and which was due me at that time, and he admitted to me at that time that he would not be able to make that payment. Also, he had never paid me the weekly payments called for in the original contract. There was another reason that I wanted to redraw the contract, and that was that the original contract first provided that the entire interest in the optional agreement should be assigned to me for my protection. Subsequently he had persuaded me to change that by one of the amendments to the contract to a half interest. Well, as I thought that over, I did not like it very much, so I told him I wanted that put back again to read as the entire interest. Then the contract had been amended some half a dozen times and I thought it was pretty well garbled and I thought it was time to redraw it. I told him I would consider the second payment but we would have to redraw the contract and he said, "All right, you draft it." So in a couple of days after that I submitted him a draft.

Q. That would be some time in March?

A. I think that is pretty close around the 20th.

Q. The 20th of March?

A. Between the 20th and 25th.

(Testimony of J. St. Paul White)

Q. I now show you Defendant's Exhibit G and ask you to examine it and state if that is the contract that you submitted to him?

A. Is this the same one that was read here the other day?

Q. Yes.

A. Yes, that is the one.

Q. You submitted that contract to him, did you?

A. Yes, sir.

Q. At the time you submitted it to him just state the conversation you had with him.

A. Well, I told him that I was still thinking—this was just a couple of days after our first conversation, immediately after our conversation—I told him I was still considering the matter and had drawn the new agreement as I thought it should be. He glanced at it casually and put it on the desk and said he would read it over later.

The next time I saw Mr. Alford in connection with the second payment was possibly a week after that. It may have been ten days. I had seen him in the meanwhile, but the next distinct recollection I have of a discussion of the payment with him was about ten days afterwards. It was about the last of the month or the first of April.

Q. What conversation did you have with him in connection with it at that time?

A. I told him that I could not see my way clear to make it, that I was troubled about the money that I had borrowed, which I owed the bank at that time, and it didn't look to me as though the project was going to be a successful one, and that I had been advised against it. I told him not to count on me, to go on out and get the

(Testimony of J. St. Paul White)

money if he could. I told him at that time, as I testified the other day, that we would disregard this second draft of the contract that I would have to stand on the original agreement and that I would have to tell him that I was not willing to do anything not provided for in the agreement. I also told him that there was a 30 day clause in there for default, that he had defaulted in the weekly payments on March 28th and that he would consider the 30 days as beginning then, because he had 30 days within which to correct the default.

MR. FRIEDMAN: I would like to have the last portion of that answer repeated.

(The reporter repeated the portion of the answer as follows: "I also told him that there was a 30 day clause in there for default, that he had defaulted in the weekly payments on March 28th and that he would consider the 30 days as beginning then, because he had 30 days within which to correct the default.")

THE WITNESS: Did I say he had defaulted in the weekly payments on March 28th? I meant that he had defaulted in the weekly payments as they were due and had again defaulted on the specific payment called for on March 28th of 5 per cent of the sales made to that date. He never paid me any of that.

Q. Do you recall any reason you gave him for not going on with it, any other reason?

A. Well, except that I was pretty well awake by that time. I did not think much had come in from the sales campaign. I had anticipated an average of a hundred a day and I do not think they were making at that time—it was very much less, maybe eight or ten or fifteen.

(Testimony of J. St. Paul White)

I telephoned to Mr. Alford, if I am not mistaken, on a Sunday, I believe the 17th of April, followed on Monday, the next day. I was worried. I knew the thing was about to go by default and I called him up at his house and asked him if he had—I knew he was striving pretty strenuously to get the second payment, but I wanted to know at the last minute whether he had it. I suppose I called him up every day and asked him if he had it, or saw him every day. I called him up this Sunday morning and told him I had to go down to the office and he said that he had to go down to his office and that he would come over. So we just discussed generally and he said no, he didn't have it.

I did not telephone to Alford late on the afternoon of April, 17th 1927, and make the statement to him that I wanted to discuss the making of a second payment under the contract. When Mr. Alford came to the office I do not remember of making any such statement as: "Well, I have raised that money for the second payment." I did not make that statement at any place on the 17th of April. Neither did I at that time state to Mr. Alford that, "It is a lot of money; it was not easy, and I am going to hand you a new contract which is pretty stringent in its terms." I do not think that contract was any more stringent in its terms. I do not think that Defendant's Exhibit G was very stringent in its terms, and I did not tell Mr. Alford so.

I did not make a statement to Mr. Alford on the 17th of April, 1927, as follows: "But if it is okay with you we will wire that money to Boise City tonight."

Mr. Alford's statement that I handed him that contract for the first time during the evening of April 17th, 1927, in my office, is not correct.

(Testimony of J. St. Paul White)

My first information, with reference to the release to the first option agreement dated January 17th, 1927, which is Government's Exhibit 1, that Mr. Alford wanted me to execute such release, was in the telegrams. Then he returned from Oklahoma shortly after that wire correspondence and he and I met in Mr. Forrest's office—Mr. Forrest was my attorney—and we discussed the matter of the releases. He said that he was about to enter into a new deal and I said if that were the case and I was to be sidetracked on the matter and left in the air with my investment of $25,000 and nothing to show for it but this land, which I had subsequently ascertained had been sold, or land very close to it, at $7.50 an acre, when I paid $15. for it—I said it seemed to me it was only the part of fairness for him to let me in, to let me have something out of the new deal, and he mentioned some land which he was acquiring or had got an option upon it—I do not know now what it was—but he testified, I think, that it was four sections. I am not prepared to deny that it was four sections although my recollection is not exactly clear as to the amount; but whatever it was he objected to it, and then the conversation went off into other channels and he left the office. I did tell him that I would require such a condition for my release. I could not say exactly when, but it was very shortly after that and before the 15th of May.

The next time that I received any word from Mr. Alford that he wanted me to execute such a release was about July, 27th. At that time I said to Mr. Alford that I was willing to sign and forget all about the land and he submitted a release. It is not true that Mr. Alford between the 9th of May, 1927, and the 27th day of July, 1927,

(Testimony of J. St. Paul White)

repeatedly came to me and asked me to sign this release. I was ready and anxious to sign it. I wanted to get out of it. The release was presented to me on the 27th of July. I submitted it to Mr. Forrest. I would like to correct my statement. I had a letter from the Seaboard National Bank on the 26th of July, in which they said that they had certain papers for me to sign from Oklahoma. I told Mr. Forrest about that and I think he went over with me to see Mr. Blackmore at the bank. A form of release had been prepared, I believe by the attorneys in Oklahoma City, and had been sent to Mr. Blackmore, and was delivered to us at that time. I did not sign that release. Another release was prepared by Mr. Forrest which I signed. I do not know whether Mr. Forrest forwarded it to Oklahoma or gave it to Mr. Blackmore or what he did, but Mr. Forrest handled it. My best recollection is that I actually executed this release around August 17th, 1927. There was considerable correspondence between Mr. Forrest and the Oklahoma attorneys as to the terms of the release. It seemed to involve my title to the 1680 acres and we had to clear that up.

Either just before or just after April 17th, 1927, I had a conversation with Mr. Alford relative to my giving deeds to any part of the 1680 acres to the people who had bought and paid for their tracts. I called Alford's attention to the fact that the contract was in default and I told him that I thought he ought to be very careful how he proceeded thereafter; that he was in the course of collecting money on these various contracts he had made and that those people were going to expect something. I told him that I knew that he had spent considerable of that

(Testimony of J. St. Paul White)

money that he had collected on commissions and office expenses and that sort of thing, and did not have any money then that I knew anything about, and I told him if the subscribers wanted to go ahead and if he would give me half of the balance that he was going to collect from those subscribers, which would be on the average of $60 a subscriber, which would give me $30, that I would be willing to convey my acres to each subscriber to take it, provided, of course, that he explained the matter fully to them and they were content. I told him at the same time that he understood the breaking up the tract in that way would make it difficult for me to do anything at all with the remainder of it, but nevertheless I would be willing to protect him that far. I do not recollect his reply to that. My recollection is he simply took it under advisement. It seems to me that he said that he didn't think that would be necessary, that he would take care of them in some other way. He never accepted that proposition. I never knew until after April 17th and until I had a letter from attorneys that Alford was selling acreage outside of the 1680 acres. I first learned this about the 28th or 29th of August, 1927.

CROSS EXAMINATION.

BY MR. FRIEDMAN:

My recollection is that the first time I ever had any information that any acreage was being sold outside of the first 1680 acres, to which I had received the deed, was not until August of 1927. I did not make any sales of this property myself. I mentioned the matter to some of my friends. I mean I told Mr. Alford to send salesmen up there and I know that he did. I mentioned this matter of

(Testimony of J. St. Paul White)

the Oklahoma land to Mr. Dimling, Mr. Doring, and Mr. Stern. There may have been some others that I cannot recall. I know Mr. Casebeer and I might have talked to him about the matter. In the conversations I had with these people relative to sales, I told them about Mr. Alford's project and I told them that we had this land down there; that it was prospective oil land; that oil had been discovered near there and that I thought it was a pretty good bet. I had known them for years. They were all my personal friends. I do not recollect showing them any maps. I think all that was done by the salesmen. I had some maps in my possession at that time. I am very generally conversant with the form of plats the salesmen were given from which to make sales. I think Mr. Alford sent me one at one time. I do not know what section it covered as I never examined it. I never showed it to any of the people that I spoke to about the property. I do not recall; in fact I would say I did not mention to any one of these people where in the tract they should purchase or what I thought would be the best spot. I simply recommended it to them in the most general terms and the rest of it was done by the men who sold it.

During the time between the first and second payments on the Slack contract, I kept myself generally informed of the conditions of the office around the Alford concern. I was in and out of the office on quite a few occasions and I saw some maps there. I do not recall how the maps were divided. My memory perhaps is that they showed in colors the land embraced in the project. I do not remember any divisions. If I saw them I did not pay much attention to

(Testimony of J. St. Paul White)

them. That was a sales detail. I knew the terms under which this property was being sold.

My understanding was that nothing was to be sold except the land that had been released. I knew that under the contract the second payment, due in 60 days, was $32,000. I knew that out of the money that was collected for the sale of any part of the first 1080 acres, that only 40 per cent was collected down. I knew that 25 per cent went immediately to the salesmen for their commissions, and I knew Mr. Alford had office expenses. I knew that Mr. Jackson, the sales manager, was also being paid a commission or bonus of one or two per cent. My understanding was that nothing outside of the 1080 acres was to be sold until the second payment had been made and another tract released. My first understanding of it was that the second payment of $32,400 was to be paid out of the returns of sales of the first 1080 acres. Of course, I awakened to the fact later, that there would not be sufficient out of that first tract and I mentioned that to Mr. Alford and he said that he would provide for that himself. I did not know that any of this land had been sold before the first payment had been made.

I went to see Mr. Parkford after Mr. Alford had been to see him. Mr. Parkford telephoned me and said a man by the name of Alford was there who had referred to me; that Mr. Alford was endeavoring to have him put the money into an enterprise, which he described as being his enterprise, and asked me what I knew about it. I told him that I was in it to an extent and he would have to use his own judgment. He said, he was not going any further with it because he didn't have time to investigate it and

(Testimony of J. St. Paul White)

his experience had been that every time he jumped into something in a hurry he got stung and that he was going to turn it down. I did not see Mr. Alford and Mr. Parkford together.

EXCEPTION NO. 31.

Q. Are you interested in the Capital Assets Corporation?

MR. ARMSTRONG: Objected to as not cross-examination.

THE COURT: The objection is sustained.

MR. FRIEDMAN: I might state the purpose of it—may I state the purpose of it, rather? It is simply to show that it will be disclosed that this witness had some interest in it, and it is in evidence in this case.

THE COURT: That would not affect the ruling on the question unless you show the materiality of it. You could not do that before the jury, and the jury may be excused.

(The jury were thereupon excused until 2:00 o'clock.)

THE COURT: You may now make your avowal.

MR. FRIEDMAN: My understanding is that the Capital Assets Corporation, about which I wish to ask the witness, is a corporation in which Mr. Alford has rather a large interest; that Mr. White has an interest in it and through a series of deeds executed by Mr. White these 1680 acres are now, according to the record, vested in the Capital Assets Corporation which, at the present time, is maintaining suits in the courts of Oklahoma to quiet title to these acres.

THE COURT: What has that to do with the case?

MR. FRIEDMAN: Well, I will have to make the statement that I made when the witness was on the stand

(Testimony of C. L. Brubaker.)

before. It is merely information that has come to me and I cannot vouch for the truth of it, but I believe the transfers were without consideration and that the land, as a matter of fact, is still Mr. White's land and that suits are being brought to quiet title as against these contracts and as against Mr. Alford.

THE COURT: The objection will be sustained.

MR. FRIEDMAN: And I desire to note an exception.

(2:00 o'clock the trial was resumed, the jury were present and the following proceedings had:)

TESTIMONY OF C. L. BRUBAKER for the UNITED STATES.

C. L. Brubaker,

recalled, in rebuttal, as a witness on behalf of the United States, having previously been sworn, testified in substance as follows:

DIRECT EXAMINATION.

BY MR. ARMSTRONG:

At the time the transaction was completed I talked to Mr. Jackson concerning the 16 acres, which I purchased under the name of C. L. Baker. This conversation took place in Mr. Jackson's office of Alford & Co. At that time I did not tell Mr. Jackson that I had sold those sixteen acres to a banker friend of mine. At that time and place I did not tell him that the man that made the $630 check was tied up on the stock market and couldn't give a check for $630 at that time. I did not have a conversation with Mr. Alford about it.

Q. Just state what conversation you had with Mr. Jackson concerning this transaction.

(Testimony of C. L. Brubaker.)

A. I went in the office that morning and up on the blackboard was a notice to all salesmen holding plats in section 16 to "See me at once. (Signed) Jackson." I went in to Mr. Jackson's office and he said, "Bru, you have got some plats in section 16." He said, "J. W. is just back from Oklahoma, and all that acreage on that highway is withdrawn from sale, because he intends to sell it at a higher price." I said to Jackson, "Gee, I wanted some of that acreage myself." "Well," he said, "You want to get it and get it quick and get out of here and don't let anyone see that you have seen me or", he said, "you might not be able to hold an order." I said, "Right now the way I am situated financially it would be kind of hard." So then Jackson asked me about how much I had thought I wanted and I told him. So he said, "Well, that will be easy." He said, "Can't you buy it in a relative's name?" I said, "I haven't a relative in town." He said, "Buy it in some good friend's name." I said, "That would be pretty risky, if it turns out the way I expect it to turn out, I might have trouble in getting it back to myself." Then he said, "Purchase it in your name which is up on the sales board," which was C. L. Baker. I said, "I haven't got the money." He said, "You can pay $10 down, can't you?" I said, "Yes, I can pay $10." And he said, "Give a post-dated check." I said, "How long?" And he said, "Oh, thirty or forty days." He said, "You are working and you can make the balance of the down payment from your commissions as they come in, but you had better give me a check, because $10 is a pretty small check on this sized purchase. But give me a post-dated check on the balance of the down payment," which I did

(Testimony of C. I. Brubaker.)

with the understanding further with Mr. Jackson that there was no bank account there at the time in that party's name. And he assured me that he positively would hold the check and not present it to the bank until he had talked with me about it or I had told him to do so.

Q. Do you recall on or about April 20th, in Mr. Altord's office, in the presence of Mr. Jackson, that this situation occurred. You asked for the check back and Mr. Altord was quite surprised to find out that you had put in a bogus check. Do you recall such an occurrence as that?

A. I wouldn't be positive as to that date. It was around that time, I judge, when the acreage was taken—when the sale of the acreage was taken off, that I said to Jackson, "You will cancel that order and return that check, won't you?" And in the room at the time—I well remember—was Jackson, Bradley and myself, but I don't remember Mr. Altord being there.

On or about April 20th, 1927, and because of the discussion concerning this particular transaction, Mr. Altord did not tell me not come up to the office any more, or to get out and stay out, and at that time and place I did not beg for this check back. I did not tell Mr. Altord at that time that I wanted the check back so I wouldn't be prosecuted on a bogus check.

No cross-examination.

(Testimony of Cameron E. Bradley.)

TESTIMONY OF CAMERON E. BRADLEY, for the UNITED STATES

Cameron E. Bradley,

recalled in rebuttal, as a witness on behalf of the United States, having previously been sworn, testified in substance as follows:

DIRECT EXAMINATION

BY MR. ARMSTRONG:

I recall an occasion when Mr. Jackson told me to go down to the bank with that $6,30 check, signed "C. L. Baker". He did not tell me at that time to go down and present the check. He told me to go to the bank and see if there was an account in that name. I was present at a conversation between Mr. Jackson and Mr. Brubaker concerning this check. This was on March 25, 1927. I went into Mr. Jackson's office and gave him this paper, which is Defendant's Exhibit M, and the only conversation that took place while I was present was that Mr. Jackson gave Mr. Brubaker back the check and he said "Well, Bru, I guess we will have to credit that $10 to profit and loss". That is all the conversation I recall at that time, and Mr. Morel was not present.

GOVERNMENT RESTS.

(Mr. Friedman then inquired if Mr. White had returned as he desired to further cross-examine him on his testimony given in rebuttal. The Court said that he might do so when Mr. White arrived and that he should proceed with the surrebuttal.)

(Testimony of Brooks E. Miller)

TESTIMONY OF BROOKS E. MILLER,
for the defendant.

Brooks E. Miller,

recalled in surrebuttal, by the defendant, having previously been sworn, testified in substance as follows:

DIRECT EXAMINATION.

BY MR. FRIEDMAN:

I know Mr. J. St. Paul White and have known him for nine years. I was acquainted with him during the time I was acting as a salesman for the acres in Cimmaron County, Oklahoma. After I assumed my duties as such salesman I had some conversations with Mr. White relative to persons I should see for the purpose of making sales. The first of these conversations took place immediately upon my return from Oklahoma in the latter part of February. Mr. Alford, Mr. White and I were present. At that time plenty was said by Mr. White relative to what acreage I was selling. Mr. White was present during some of the times I was making or attempting to make sales of this property. To a man by the name of Dimling and men by the names of Sterns, Gaffney, Doring, McNeill and two or three others. Prior to seeing these people I have named, I had a conversation with Mr. White relative to them. I had not met any of these people prior to the time I called on them for the purpose of making sales, and I was introduced to these people by J. St. Paul White, and he was present during part of the time I was making the sales to these people. I was selling these people from a 40 acre plat and that plat was produced in Mr. White's presence while I was making the sales. The location of

(Testimony of Brooks E. Miller)

the acreage was indicated on the plat and was mentioned in the conversations with these people in Mr. White's presence. Government's Exhibit 37 refreshes my recollection as to the section I was selling in, it was Section 15. I had more than one conversation with these purchasers and Mr. White was present on more than one such occasion, except in the case of McNeill. I only met him once and he returned to San Diego and his order was mailed in. I never met him before in my life, but was introduced to him by J. St. Paul White.

CROSS EXAMINATION.

BY MR. ARMSTRONG:

The office where I spoke to these people in the Corporation Building was a surety bond house. There were plenty of desks in the particular room and these eight people were seated around these desks. Mr. White took me down there and introduced me to these several people. Two or three times when I was back in there calling on others it wasn't convenient to talk to at the first call, Mr. White came in, but he was there and introduced them to me and stood there by me while I was making my sales talk to the individual; not the entire sales talk, because he was busy. He merely introduced me and said he was up to his eyes in work, and for them to buy it, that was all the participation he took in the sale.

(Testimony of J. St. Paul White)

TESTIMONY OF J. ST. PAUL WHITE, for the UNITED STATES.

J. St. Paul White

resumed the stand and on further cross-examination in rebuttal, testified in substance as follows:

CROSS EXAMINATION.

BY MR. FRIEDMAN:

Mr. Alford had a number of maps in his office, some of them on the wall and some of them rolled. It is quite possible, if it was there, but I have no distinct recollection of it, that I saw a large linen map which had the 30,000 acres divided up into one acre tracts, which were marked off in red pencil, showing the acres which had been sold.

Rather casually on one occasion I examined a card index system that was kept in the safe. Mr. Bradley made an explanation of it. It was about a week or so after they got started.

DEFENSE RESTS.

GOVERNMENT RESTS.

EXCEPTION NO. 32.

MR. FRIEDMAN: At this time, pursuant to the statement just made by the court, and at the close of the taking of all the testimony in the case by both sides, the defendant respectfully moves the court to instruct and direct the jury to find and return a verdict finding the defendant not guilty upon all of the remaining counts. The counts now remaining in the indictment, I understand, are counts 1, 2, 5 and 6.

THE COURT: Let us see if that is correct. Will you gentlemen agree on that? The remaining counts are 1, 2, 5 and 6. Is that correct?

MR. ARMSTRONG: Yes. Those are the counts now remaining. Counts 3 and 4 have been withdrawn.

THE COURT: Counts 1, 2, 5 and 6. Very well.

MR. FRIEDMAN: Our motion is made upon the following grounds, to-wit:

1. That the evidence introduced in the case is insufficient to support either a verdict or judgment of guilty, if such judgment or verdict of guilty were found, given or made or rendered against said defendant on any of said counts;

2. That no offense sought to be charged in the indictment herein or any count thereof has been proved by the Government or established by any of the testimony in this case;

3. That the evidence so adduced, and all of it, fails and is insufficient to prove the plan, scheme or artifice set forth in said indictment or each or any count thereof;

4. That the evidence so adduced, and all of it, fails and is insufficient to prove the plan, scheme or artifice as specified in the bill of particulars furnished by the Government or as declared by the Government and as set forth in the minute order of Judge James allowing and granting in part defendant's motion for a bill of particulars;

5. That the evidence so adduced, and all of it, does not exclude every other hypothesis except that of guilt on the part of the defendant and is as consistent with his innocence as it is with his guilt;

6. That the evidence so adduced, and all of it, fails to establish the falsity of any representations alleged to have been made by defendant, or that defendant knew said representations were false or that any promises or representations made by him as to future events or happenings or occurrences were so made with the intent not to perform the same or any of them on the part of defendant;

7. That the evidence so adduced, and all of it, fails and is insufficient to prove an intent to defraud on the part of defendant;

8. That the evidence so adduced, and all of it, fails and is insufficient to prove that the letters set forth in said indictment or in any count thereof were mailed within the jurisdiction of this court;

9. That the evidence so adduced, and all of it, fails and is insufficient to prove that the letters set forth in the indictment, or in any count thereof, were mailed for the purpose of executing or attempting to execute or in furtherance of the alleged plan, scheme or artifice set forth in the indictment;

10. That the evidence so adduced, and all of it, establishes that each letter set forth in each count of the indictment was mailed after any alleged plan, scheme or artifice on the part of the defendant had been terminated and abandoned;

11. That there is a fatal and material variance between the allegations of the indictment and the allegations of each of the counts thereof and the evidence and proofs adduced at this trial.

(ARGUMENT)

THE COURT: The motion is denied.

MR. FRIEDMAN: To which we may have our exception.

THE COURT: Let the record show that the motion is made as of this time, that it is overruled and an exception is noted. Now you may proceed with your arguments, gentlemen.

(Counsel for the United States thereupon proceeded with his opening argument to the jury, at the conclusion of which an adjournment was taken until Wednesday, July 31, 1929, at 10:00 o'clock a. m., at which time the trial was resumed and counsel for defense presented his argument to the jury and counsel for the government made his closing argument. Thereupon the Court instructed the jury orally as follows:..

INSTRUCTIONS TO THE JURY.

THE COURT: (Orally) Gentlemen of the jury: It is not my purpose to sum up the evidence in this case. To do so might not serve any useful purpose, and besides, it would not relieve you of the responsibility of finding the facts for yourselves.

Counsel have presented numerous instructions or proposed instructions, rather, some of which will be given, and it may be that some of these instructions will appear to be a repetition of the Court's general instructions. Under such circumstances it is often difficult for the Court to arrange the instructions so as not to bring about an occasional repetition.

Counts 1, 2, 5 and 6 of the indictment in this case charge the defendant with the commission of offense in violation of Section 215 of the Federal Penal Code, to be found

in Section 5480 of the Revised Statutes of the United States. That section, omitting portions not material to this case, is as follows: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, shall, for the purpose of executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter, postal card, package, writing, in any post office of the United States to be sent or delivered by the post office establishment of the United States," shall be punished as therein provided.

In this connection I might say, gentlemen, that the matter of punishment is a matter entirely for the Court in the event you find the defendant guilty. You determine the facts and upon the Court is placed the responsibility of determining what punishment should be meted out to the defendant in the event of a verdict of guilty.

The offense defined by this statute is one against the postal laws of the United States, and the policy of this statute is to prevent the misuse of the mails of the United States in furtherance of dishonest schemes.

The Government intends that the post office establishment shall be used by the people for the purposes of legitimate business and social intercourse, and that it shall not be used for the purpose of furthering dishonest schemes or practices. The object of the law is to prevent persons having fraudulent designs on others from using the post office as a means of effecting such fraud.

"Artifice" is construed to mean subtle or deceptive art in contriving and trickery, cunning strategy. The highest

authorities as well as the common understanding of the word indicate that "scheme" may be of broader meaning than "artifice". A scheme does not necessarily involve deception, trickery or cunning. A scheme may provide for a plan or device for the lawful accomplishment of some purpose. The essential and material elements of a scheme under the statute just read is that it be intended to defraud. In order to find the defendant guilty of the offense charged it is not necessary that any person should actually have been defrauded by him. It is sufficient if you believe from the evidence beyond a reasonable doubt that the defendant devised the scheme as alleged in the indictment, that the same was, and was intended by him to be, a scheme to defraud as alleged, and that in furtherance thereof he sent out the letters or some of them described in Counts 1, 2, 5 and 6 of the indictment, to be sent or delivered through the post office establishment of the United States, whether such scheme was successfully carried out or not.

If a man in good faith enters into a thing, in the honest belief that what he is doing is right and proper, he cannot be convicted of crime, and if you believe that the defendant in this case was acting in good faith, he should be acquitted.

In order to convict the defendant of the offenses charged in Counts 1, 2, 5 and 6 of the indictment, or either thereof, it is incumbent upon the United States to satisfy you beyond all reasonable doubt of the truth of every material allegation in the indictment, and when I refer to the indictment I refer to Counts 1, 2, 5 and 6, the others having been eliminated.

The gist of the offense under the statute which I have just quoted consists in the abuse of the mails. It is, therefore, essential that the testimony should show and convince you beyond a reasonable doubt not only of the scheme as alleged but also that such scheme included the intended use of the mails.

The very essence of the offense charged in these several counts consists of two things: First, the devising of the alleged scheme or artifice on the part of the defendant, and second, the employment of the United States Post Office establishment by the defendant to carry out such scheme or device.

In this case the intention of the defendant is the very gist and substance of the fraud which must necessarily be embodied in the scheme or artifice as a foundation for the violation of the law. Without such fraudulent intention it would be impossible to devise a scheme or artifice to defraud.

The scheme to defraud and the means by which it was to be carried out are to be distinguished from each other. As stated, the gist of the offense is the use of the mails in execution of the scheme to defraud. It is essential to prove the existence of the scheme. The scheme may be made up of many elements. If so, it is necessary to prove a sufficient number of the elements of the scheme so that the jury may be justified in finding the existence of the scheme. But no particular element need be proven if the other elements, when proven, are sufficient to establish the scheme.

The matter mailed need not be effective to carry out the scheme and need not in itself be calculated to carry out the

scheme. It need not be criminal nor objectionable nor disclose a fraudulent purpose. It need not show on its face that it was in furtherance of the scheme. But it must have some relation to and it must be a step in the attempted execution of the scheme, and be mailed with the intent to aid in its execution. It is enough if, having devised a scheme, as alleged, the defendant with a view of executing it deposited in the post office or caused such letters to be deposited which he may have thought would assist in carrying the scheme into effect.

The offense consists of two essential elements: First that there should be devised, or intended to be devised, a scheme or artifice for obtaining money or property by means of false and fraudulent representations, pretenses or promises, and, second, that for the purpose of executing such scheme or artifice, or attempting so to do, there should be placed a letter or postcard, writing or circular, in any post office or mail box of the United States to be sent or delivered by the post office establishment. Both of these elements must be established before conviction is authorized.

The words "scheme" and "artifice" as used in the statute include any plan or course of action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property. It is not essential to the making out of the charge that the scheme or artifice should have been successfully carried out, nor is it a defense for a defendant so charged to show that the persons with whom he dealt and intended to deal received some return for an investment of money or that they would have received some return for an in-

vestment intended to be secured from them. It is essential only that the scheme formulated be fraudulent in intent as alleged in the indictment.

It is necessary that the Government prove that the scheme or artifice devised and employed by the defendant was the one charged in the indictment.

It is also essential that the letters and writings described in the respective counts of the indictment be shown to have been deposited in the United States mails, as alleged in the indictment, for the purpose of being transmitted to others, and that such letters were delivered by mail according to the directions thereon, and that such letters and writings were intended by the defendant to be so transmitted in aid and in furtherance of the alleged unlawful scheme or artifice to defraud, if such scheme or artifice you find there was.

It is not necessary that it be shown that the contents of the letters or matter mailed were of a nature calculated to be effective in carrying out the fraudulent plan. It is sufficient if, having devised a scheme or artifice to obtain money and property by means of false and fraudulent representations and promises, the defendant deposited, or caused to be deposited, in the United States Post Office at Los Angeles the letters or writings described in the indictment with the thought and intent that they would assist in carrying the scheme into effect, or caused the delivery thereof by the post office establishment of the United States.

The gist of the offense is the misuse of the United States mails. It is not necessary that the fraudulent scheme or artifice shall have contemplated the use of the

United States mails as a means of its execution: only that the mails were, in fact, used for that purpose. Nor is it necessary that the matters sent through the United States mails and pleaded as letters alleged to have been mailed, shall have contained any misleading or false statement or statements. Whether the alleged pretenses made by the defendant, if you find that any were made, which are averred to constitute the scheme to defraud, constitute an agreement, valid or otherwise, or consist of representations of fact, present or future, an expression of opinion or assurances of past, present, or future conditions, it may constitute a scheme to obtain money by means of false and fraudulent pretenses, representations and promises, provided that it be designed and reasonably adapted to deceive and defraud, and that the same were false, and known by the defendant to have been false, and if they related to future occurrences, that the defendant had no intention of performing same.

Section 215 of the Federal Penal Code is aimed at every scheme which, in fact, is designed to defraud by representations as to the past or present or suggestions and promises as to the future. It was for the purpose of protecting the public against all such intentional efforts to despoil and to prevent the use of the post office to help carry them into effect, that the statute was passed, and it would strip it of its value to confine it to such cases as disclose an actual misrepresentation of some existing fact, and to exclude those in which there is only the allurement of a specious and glittering promise. However, no promise or representation as to the future

can constitute a criminally false representation unless it is made with the intent of it never being fulfilled.

If the defendant intended to and did devise the scheme or artifice, as alleged, and did make false and fraudulent representations and assurances for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, Oklahoma, and of obtaining money by means of such false representations and pretenses, and for the purpose of executing such scheme, or attempting so to do, did place or cause to be placed the letters set forth in the several counts of the indictment in any post office or mail box of the United States in Los Angeles County, California, to be sent or delivered by the post office establishment of the United States, as alleged, then a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations. It may, however, be considered by the jury in connection with all the other evidence in the case in determining whether or not such representations, if made, were made with the intent to defraud as charged.

And in that connection I further charge you, gentlemen, that if you believe from the evidence beyond a reasonable doubt that the defendant devised the scheme or artifice as alleged, that he made the false and fraudulent pretenses and representations as alleged, and that he mailed or caused to be mailed the letters set forth in the indictment with the purpose and intent as alleged, then the fact, if it be a fact, that the defendant may have honestly believed that by selling the necessary acreage the proposition or project would be highly successful

and the investors would be ultimately abundantly repaid would be no defense. In other words, it would not justify him in securing the money from others by means of the false and fraudulent representations charged, if any such there were. However, you should consider the defendant's said belief in determining the question of his intent.

No matter how fair and honest a scheme may appear, if it was the intent of the person formulating the scheme to defraud, and the scheme was made up of false and fraudulent pretenses and representations, known to the defendant to be false, then it would be within the statute.

It is not essential that the Government prove each and every false pretense alleged to have been made or intended to be made, but it is essential that proof be made that the defendant did devise a scheme as alleged and that he employed or intended to employ some of the false and fraudulent pretenses, representations and promises as alleged in the indictment and in furtherance of such scheme used the United States mails in the particular manner alleged.

Under the laws of the State of California a person may make a valid contract for the sale of real property even though such person does not at the time own or hold the title in fee to the property. It is sufficient under the laws of the State of California if a person is in such position in relation to the property he is selling at the time he makes such sale that he will be able to transfer said property to such purchaser and deliver a deed therefor at the time he agreed upon with such purchaser. One who has an option on land or who is purchasing land

under a conditional sales contract to be payable in stated installments can, under the laws of the State of California, legally make a contract to sell said land and to deliver a deed therefor while such option or conditional sales contract remains in force, even though said option or contract is not executed at the time of agreeing to make such sale. This states the law regarding the ordinary sale in good faith of property by one who owns an equity or an interest in the property. In this case the Government alleges that it was a part of the scheme and artifice that the defendant did not exercise the option to purchase any of the land described nor obtain title to any part thereof.

"It was further a part of said scheme and artifice that the defendant should, and he did, without having title thereto, sell and offer for sale parcels and tracts of land from and out of the tract of land hereinbefore described to which he had an option as aforesaid.

"It was further a part of said scheme and artifice that he should and did pretend and represent to the persons to be defrauded that should the persons to be defrauded pay for the parcels and tracts of land included in the tract hereinbefore described and to which the defendant had an option as aforesaid, and that he, the said defendant, would deliver to the persons to be defrauded a grant deed giving them fee title to the land paid for by them as aforesaid, when in truth and in fact the defendant did not intend to and did not in any instance deliver a deed to any of the persons to be defrauded who had paid the said defendant moneys in exchange for the parcels and tracts of land included in the tract hereinbefore described and to which the defendant held an option as aforesaid."

And that is one of the material allegations of the indictment.

The mere devising or intending to devise any scheme to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, or the consummation of any such scheme does not in and of itself constitute a violation of any United States law or statute. Before there can be a violation of such law or statute there must be, in addition to such scheme, the use of the United States mails by the defendant, which use must be for the purpose of executing or attempting to execute such scheme.

It is, therefore, incumbent upon the Government to prove beyond a reasonable doubt the alleged scheme to defraud as set forth in the indictment and the use of the United States mail by the defendant for the purpose of executing or attempting to execute such scheme.

If from a consideration of all the testimony you are not convinced beyond a reasonable doubt that the defendant devised the scheme as set forth in the indictment or that he devised such scheme but did so without intent to defraud any person or persons, or if you are not convinced beyond a reasonable doubt that the defendant used the United States mails for the purpose of executing or attempting to execute such alleged scheme to defraud, you must return a verdict finding the defendant not guilty.

Before you can find the defendant guilty of any count set forth in the indictment you must be satisfied from the evidence beyond a reasonable doubt that the identical letter alleged by the Government in such count of the indictment was deposited in the United States post office by the de-

fendant, personally or under his direction, and that such depositing occurred within the jurisdiction of the United States District Court for the Southern District of California.

You are instructed that a letter is not mailed in execution or the attempted execution of any scheme to defraud if such letter be mailed before the scheme was devised or after the scheme was consummated or accomplished or if such letter was mailed in connection with a transaction entirely different than the alleged scheme to defraud.

It is not sufficient that the Government merely prove the physical facts alleged to constitute the scheme to defraud as set forth in the indictment. But in addition thereto the Government must prove beyond a reasonable doubt that such scheme was devised by the defendant with the specific intent to defraud the persons designated in the indictment. The persons designated in the indictment are alleged therein to be Bessie E. McCluggage, E. R. McNeill, Edith E. Skoog, John R. Gordon, Charles E. Hood, Madolin B. Hoch, and other persons too numerous to mention, including the public generally.

If you find that the defendant devised the scheme as set forth in the indictment but at the time of devising such scheme the defendant had no intent to defraud any person or persons whatsoever, you must return a verdict finding the defendant not guilty on each count of the indictment.

In determining whether the plan or scheme set forth in the indictment was a plan or scheme to defraud, you are not to take into consideration your personal opinion as to whether said plan or scheme of operation was practicable or impracticable, or whether it was a plan of operation

that you personally would or would not have participated in. Even though you are of the opinion that the scheme alleged to have been formulated by the defendant was impracticable or impossible to perform, you must nevertheless return a verdict finding the defendant not guilty should you find that such scheme was formulated by the defendant without any intent to defraud on his part and with his honest belief that the scheme was feasible and practical.

Good faith and lack of intent to defraud on the part of the defendant constitute a complete defense to each and all of the offenses charged in the indictment.

The essence of the scheme to defraud alleged in the indictment is the obtaining of money and property by means of false and fraudulent pretenses, representations and promises on the part of the defendant, which pretenses, representations and promises are set forth in full in the indictment.

Before you can find the defendant guilty on any count of said indictment, it must be established to your satisfaction and beyond a reasonable doubt that the identical scheme alleged in the indictment or a substantial portion thereof existed. You cannot find the defendant guilty on any count of the indictment upon proof that some other scheme or some scheme other than that alleged in the indictment was devised or formulated by him.

In determining whether or not the Government has proved the scheme to defraud as set forth in the indictment, I instruct you that any promise or representation made by the defendant, directly or indirectly, relating to the performance of some act in the future does not con-

stitute a false or fraudulent pretense, representation or promise, even though such act was not performed by the defendant, if at the time of making such pretense, representation or promise the defendant was of the opinion and honestly believed that he could and would perform and fulfill such pretense, representation and promise.

If, on the other hand, you believe from the evidence beyond a reasonable doubt that the defendant was not of the opinion and did not honestly believe that he could and would perform and fulfill such pretenses, representations or promises, then they would constitute a false, and fraudulent pretense, representation and promise within the meaning of the law.

If you find that the defendant honestly and in good faith, without intent to defraud anyone, entered into the business of selling or attempting to sell the lands described in the indictment as being situate in Cimarron County, Oklahoma, you must find that the defendant was not guilty of devising or attempting to devise any scheme or artifice to defraud, even though you find that some persons dealing with the defendant for the purchase of any of such land lost their money as a result thereof.

With reference to the intent with which an act is committed, intent being a mental state of a party accused, direct proof of it is not required nor, indeed, can it ordinarily be sought. But intent is generally derived from and established by all the facts and circumstances surrounding the person doing the act complained of, as disclosed by the evidence. In order for you to determine in this case the question of intent, you will look at all the evidence, oral and documentary, in the case. By "docu-

mentary evidence" I mean the letters and other papers received and admitted in evidence; not those that were offered and excluded. And you must not consider letters, papers, documents, checks or writings which have been marked for identification as such papers are not in evidence.

Every man is presumed to intend the natural and probable consequences of his acts. There is one matter which I was about to overlook. There has been testimony introduced in this case relative to statements made by purported agents of the defendant. Whether or not any person whose name has been mentioned in the testimony or who has appeared and testified in the case was or was not an agent of the defendant is a question of fact which you, the jury, alone can determine.

Before one can be convicted of a crime by reason of the acts of his agent a clear case must be shown. The civil doctrine that a principal is bound by the acts of his agent within the scope of his agent's authority has no application to criminal law. When false and fraudulent pretenses, representations and promises are made by an agent they must be directly authorized or consented to in order to hold the principal, or authority to do a criminal act will not be presumed. If such false and fraudulent pretenses, representations and promises were made by the defendant's agent as set forth in the several various counts of the indictment, or in the sale of any of the land in Cimarron County, Oklahoma, such false and fraudulent pretenses, representations and promises must be founded, as just stated, upon the authorized acts. The question of whether or not any pretenses, representations

and promises were made by said agents to the buyers of said land or prospective buyers thereof, and whether they were false and fraudulent is also a question for the jury under all the facts and circumstances in evidence.

In order to convict the defendant of the crime charged in this indictment it is incumbent upon the United States Government to satisfy you beyond a reasonable doubt of the truth of every material allegation of the indictment. The law raises no presumption against the defendant, but every presumption of law is in favor of his innocence. This presumption of innocence continues throughout the trial until such time, if there be such a time, as the jury finds that he has been proven guilty beyond a reasonable doubt. Then that presumption of innocence no longer prevails.

Before you can find the defendant guilty, you must find his guilt beyond a reasonable doubt. A reasonable doubt as applied to evidence in criminal cases is such a doubt as you as reasonable men may entertain after a thorough review and consideration of all the evidence, a doubt for which a reason arising from the evidence, or want of evidence, exists. It is not a mere possibility of a doubt or an imaginary doubt, but a serious, substantial, well-founded doubt growing out of the evidence or want of it.

While it is true that the Government is required to prove the guilt of the defendant beyond a reasonable doubt, it is not required to prove his guilt to a mathematical certainty. Such a thing as mathematical certainty cannot exist in the enforcement of law. Proof of this character is rarely attainable in human investigations. All that courts and juries can act upon is belief to a moral cer-

tainty. It may be said that everything relating to human affairs and depending upon mortal testimony is open to some possible or imaginary doubt.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is the direct, positive testimony of an eye-witness to the transaction or commission of the crime. The other is proof by testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, which is known as circumstantial evidence. Such evidence may consist of plans laid for the commission of the crime or any other acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the offense.

Circumstantial evidence is proof of certain facts and circumstances in any particular case from which the jury may infer other and connected facts, which usually and reasonably follow, according to the common experience of mankind.

Crime may be proved by circumstantial evidence as well as by direct testimony of eye-witnesses, but the facts and circumstances in evidence should be consistent with each other and with the guilt of the defendant and inconsistent with any other reasonable theory of his innocence.

In circumstantial evidence it is not necessary that each circumstance relied upon be proved by the same weight and force of evidence and to be as convincing in its conclusiveness of guilt as if it were the main issue in the case, but the circumstances may be combined together and thereby give strength to each other.

You are made by the law the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have appeared before you and of the weight that you will give to the several witnesses who have testified in the case.

In determining the credibility of any witness and the weight you will give to his testimony, you have the right to take into consideration his manner and appearance while giving his testimony, his means of knowledge, any interest or motive which he may have, if any be shown, and the probability and improbability of the truth of his statements when considered in connection with the other evidence in the case.

If you believe that any witness either for the Government or for the defendant has testified falsely as to any material fact in the case, then you have the right to entirely disregard the testimony of such witness, except in so far as he may be corroborated by other credible evidence in the case or by the facts and circumstances in evidence.

The law permits the defendant at his own request to testify in his own behalf. The defendant in this case has availed himself of this right. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of this case may be considered by you in weighing his evidence and determining how far or to what extent, if at all, it is worthy of credit.

In considering the credibility of or weight which you will attach to the defendant's testimony, you should regard among other things the inherent probability or improbability of his statements and the extent to which the

same have been corroborated or contradicted by other evidence in the case, whether documentary or oral. Where a witness has a direct interest in the result of a case, especially of a criminal case, the temptation may or may not be strong to color, pervert or withhold the facts, and it is for you to determine in considering the testimony of the witnesses whether or not they were actuated by any interest, illwill or other motive.

However, you should not disregard the testimony of the defendant merely because he is the defendant, because to do so would be to disqualify him as a witness, which the law does not do. It says that all person, whether defendants or some other persons, shall be competent witnesses, and the credibility and the weight you will give to their testimony is entirely a matter for the jury to determine.

Gentlemen, I wish to say now that no opinion expressed by the Court and no comment made by the Court on the evidence, if it carries with it an opinion regarding the facts, should be given any consideration by the jury in determining what the facts are. You and you alone are the sole judges of the facts. The Court instructs you as to the law and it is your duty to take the Court's instructions as to the law. The Court expresses no opinion as to the facts. You must find the facts for yourselves.

I submit the case to you, gentlemen, reminding you of its importance both to the Government and to the defendant. If the evidence of the defendant's guilt is not entirely clear, he should certainly be acquitted. If it is entirely clear, and you believe it has been proven beyond a reasonable doubt, he should certainly be convicted. No sym-

pathy or prejudice must be allowed to influence you or your minds in passing upon this case.

We are concerned only with the execution of the law. We have only to consider whether the statute to which your attention has been called has been violated. It is your duty to see the law is honestly and justly executed. The peace and quiet of the community depend so manifestly upon the proper administration of the law that no man can fail to see it. If the defendant has been proven guilty beyond a reasonable doubt, you should say so unhesitatingly by your verdict. On the other hand, if his guilt has not been established to your satisfaction beyond a reasonable doubt, you should not hesitate to return a verdict of not guilty. Your verdict should represent the truth of the entire transaction, let the consequences be what they may.

It will be your duty to determine separately the guilt or innocence of the defendant as to each of the counts in the indictment, Counts 1, 2, 5 and 6. You will be furnished with a form of verdict and it will be your duty to insert in each of the blanks the word "Guilty" or the words "not guilty," as you in your deliberations may determine, and cause your foreman to sign the verdict which represents your conclusions.

If there is no objection by counsel, I will mark in pencil Counts 1, 2, 5 and 6 as being the counts that are now before the Court and jury.

MR. ARMSTRONG: No objection.

MR. FRIEDMAN: No objection at all.

A JUROR: Your Honor, will we have a copy of the indictment?

THE COURT: Yes, I will furnish you with a copy of the indictment. If at any time the jury desires to inspect any of the exhibits admitted in evidence, if you will so indicate to the bailiff they will be furnished to you.

THE JUROR: We would either like to have the counts read again or else have a copy of the indictment.

THE COURT: I am furnishing you with the original indictment, which you will carefully guard and return to the Clerk. You must not separate without consent of the Court. After you have arrived at a verdict you will notify the bailiff, and as soon as counsel can be found the Court will receive your verdict. You may swear the bailiff. Are there any exceptions by the defendant?

EXCEPTION NO. 33

MR. FRIEDMAN: Yes, your Honor, I have only one or two. I would like our exception noted to the Court's failure and refusal to give requested instructions 10, 12 and 14 on behalf of the defendant.

EXCEPTION NO. 34

I would like to note an exception to that portion of your Honor's charge—and I make the exception more for the purpose of calling the same to your Honor's attention at this time and likewise for the purpose of preserving my record—which states in part that if there were any false representations as to the ownership of the land in Oklahoma and were made by the defendant knowing them to be false, which were followed by any depositing of letters by the defendant in the mails, and so forth. I would like to note an exception on the ground there is no allegation in the indictment relative to any false representations as to ownership of land in Oklahoma.

THE COURT: Pardon me just a moment. That is one of the requests made by the Government?

MR. ARMSTRONG: Yes, your Honor. I had in mind the fourth paragraph on page 2, to the effect that the defendant would give a grant deed to the persons to be defrauded upon their making the payments.

THE COURT: That refers to "the tract hereinbefore described and it was thereinbefore described as being in Cimarron County, Oklahoma.

MR. FRIEDMAN: Yes. I haven't a copy of the Court's instructions before me, but it refers to the fact that if the jury finds there were any false representations made by the defendant as to his ownership of the land, which was followed by the deposit of any letters in the mail, etc. I made my exception to call to the Court's attention the fact that there is no allegation in the indictment that the defendant made any false representations as to his ownership of the land and, therefore, any letters which were based upon such false representations would not be mailed in pursuance of the scheme set forth in the indictment.

THE COURT: Let me read that, will you?

MR. FRIEDMAN: Yes.

THE COURT: Your objection is not as to the location of the land?

MR. FRIEDMAN: No. My objection is that the instruction specifies a representation as to the ownership of the land. I will merely restate my grounds, that there are no allegations contained in the indictment that such representation was a part of the scheme.

THE COURT: Very well, it may be noted.

EXCEPTION NO. 35

MR. FRIEDMAN: And in that same behalf, if your Honor please, I desire to note an exception to that portion of your Honor's charge wherein you instruct the jury that all the elements of the scheme need not be proved and that it is only necessary and will be sufficient if sufficient elements can be proved to establish the scheme. I make my exception on the ground that the instruction does not specify that the scheme cannot be established by elements other than those alleged in the indictment.

THE COURT: I understand your position.

That Defendant's Instructions No. 10 and No. 12, the refusal of the court to give which constitutes defendant's Exception No. 33 herein, are as follows:

DEFENDANT'S REQUESTED INSTRUCTION NO. 10.

It is incumbent on the Government to prove that the representations, pretenses and promises alleged in the indictment to have been made by the defendant were made by him and that such pretenses, representations and promises were untrue and known by the defendant to have been untrue at the time of the making thereof or that the defendant in making any of said alleged promises did not, at the time of the making thereof, intend to fulfill such promises.

If you find that any promises made by the defendant were not fulfilled by him or that any representations as to future events did not occur as represented this, in and of itself, is not sufficient to establish the fact that the defendant did not intend to fulfill such promise or that he knew such representation to be false. In addition to the

proof that such promise was not kept or that such representation was not fulfilled there must be evidence to establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled.

If there is any reasonable doubt in your minds as to whether any representation or promise made by the defendant was made by him in good faith and with an honest belief that such representation or promise would be fulfilled, you must resolve such doubt in favor of the defendant and find that such representation or promise was neither false or fraudulent. Indorsed.

Post vs. U. S. 135 FED. 1, 6.

Refused. Substantially contained in general and requested instructions. Repetition.

Wm. H. Sawtelle.
United States District Judge.

DEFENDANT'S REQUESTED INSTRUCTION NO. 12.

The mere fact that defendant was unable to refund all the money he had received does not constitute any proof of a scheme to defraud. Indorsed.

Faulkner vs. U. S. 157 FED. 840.

Refused. Abstract. No evidence that defendant was unable to refund all the money he had received.

Wm. H. Sawtelle.
United States District Judge.

(Thereupon the jury retired to deliberate upon its verdict and subsequently returned into court with a verdict finding the defendant, J. W. Alford, guilty on Counts 1, 2, 5 and 6 of the Indictment.)

Thereafter the matter was continued until Saturday, August 3rd, 1929, at 10:00 o'clock a. m., at which time the following proceedings were had.

EXCEPTION NO. 36.

Thereupon the defendant moved the court for a new trial, which said motion was in writing, filed and is in the words and figures as follows:

(TITLE OF COURT AND CAUSE.)

MOTION FOR NEW TRIAL.

Comes now the above named defendant J. W. Alford, by his attorney, Leo R. Friedman, and moves the Court to set aside the verdict herein and grant him a new trial, and as reasons therefor shows to the Court and specifies the following:

1. That the Court erred in denying the defendant's motion for a Bill of Particulars in all respects, except as said motion was in part granted by the Court.

2. The verdict is contrary to the law of the case.

3. The verdict is not supported by the evidence in the case.

4. The Court upon the trial of the case admitted incompetent evidence offered by the United States.

5. The Court upon the trial of the case excluded competent evidence offered by the said defendant.

6. That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses or any of them alleged in the indictment in this: That there is no proof that the alleged offenses or any of them was committed within the jurisdiction of the above-entitled court.

8. That the Court improperly instructed the jury, to the substantial prejudice of said defendant.

9. That the Court refused, to the substantial prejudice of said defendant, to give correct instructions on the law tendered by said defendant.

10. That the Court erred in refusing to direct a verdict of "Not Guilty" at the close of the evidence of the United States.

11. That the Court erred in refusing to direct a verdict of "Not Guilty" at the close of all the evidence.

Dated at Los Angeles, California, August 3rd, 1929.

LEO R. FRIEDMAN,
Attorney for defendant.

Which motion for a new trial was by the court denied, to which denial the defendant then and there duly and regularly excepted.

EXCEPTION NO. 37.

Thereafter the defendant moved the court in an arrest of judgment, which said motion was in writing and was in the words and figures as follows:

(TITLE OF COURT AND CAUSE)

"MOTION IN ARREST OF JUDGMENT.

And now, after verdict against the above-named defendant, J. W. Alford, and before sentence, comes the defendant in his own proper person, by his attorney, Leo R. Friedman, and moves the Court here to arrest judgment herein and not pronounce the same for the following reasons, to-wit:

1. That the said indictment and each count thereof in this cause does not state facts sufficient to constitute a

public offense under the laws of the United States against the said defendant.

2. That it appears from the record in the above-entitled cause that judgment, if made and entered, would be unlawful.

3. That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses or any of them alleged in the indictment in this: that there is no proof that the alleged offenses or any of them were or was committed within the jurisdiction of the above-entitled court.

4. That the indictment and each and every count thereof is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

WHEREFORE, because of which said errors in the record herein no lawful judgment can be rendered by the Court, the said defendant prays that this Honorable Court arrest and withhold the judgment herein and that the verdict herein be vacated and set aside and declared null and void.

Dated at Los Angeles, California, August 3rd, 1929.

LEO R. FRIEDMAN,

Attorney for defendant."

Which said motion in arrest of judgment was denied by the court, to the denial of which the defendant then and there duly and regularly excepted.

Thereupon the Court imposed sentence upon the defendant as follows:

THE COURT: You may arise. It is the judgment of the Court that you are guilty as charged in the first count of the indictment and as a punishment therefor that you be imprisoned in the Federal penitentiary at McNeil's Island for a period of five years, with a fine of one thousand dollars;

That you are guilty as charged in the second count of the indictment and that your punishment be fixed at two years' imprisonment in the same penitentiary, the second count to run concurrently with the first, and a fine of one thousand dollars;

That you be punished under the fifth count of the indictment by imprisonment for two years and no fine, to run concurrently with the first and second counts;

That you be punished by imprisonment in the said penitentiary for two years on the sixth count, to run concurrently with the first, second and fifth counts, and that no fine be assessed therefor.

The above Bill of Exceptions contains all of the evidence, oral and documentary, and all of the proceedings relating to the trial, conviction, motion for a new trial and motion in arrest of judgment.

Dated September 5th, 1929.

Leo R. Friedman

Attorney for defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff and respondent,	
vs	No. 9534-M
J. W. ALFORD, Defendant and appellant.	

NOTICE OF PRESENTATION OF BILL OF EXCEPTIONS.

To Samuel W. McNabb, Esq. United States Attorney in and for the Southern District of California, as attorney for the above named plaintiff.

You will please take notice that the foregoing Bill of Exceptions constitutes and is the proposed Bill of Exceptions of the above named defendant in the above entitled cause, and is hereby tendered as such, and the said defendant will apply to the above entitled court to have the same allowed, signed and sealed by said court as the Bill of Exceptions herein, pursuant to the statute in such case made and provided.

Dated September 5th, 1929.

Leo R Friedman
Attorney for defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff and respondent, vs. J. W. ALFORD, Defendant and appellant.	No. 9534-M

STIPULATION RE SETTLING, ETC. OF BILL OF EXCEPTIONS.

It is hereby stipulated and agreed by and between the respective parties hereto that the foregoing Bill of Exceptions on behalf of the above named defendant, J. W. Alford, on appeal herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, has been duly presented within the time allowed by law and the rules and orders of this court, duly and regularly made in this behalf, and the same is in proper form and conforms to the truth and sets forth all of the evidence and all of the proceedings relating to the trial, conviction, motion for a new trial and motion in arrest of judgment in the above entitled cause, and that it may be settled, allowed, signed and authenticated by this court as the true Bill of Excep-

tions herein, on behalf of said defendant, and that it may be made a part of the record in this cause.

Dated at Los Angeles, California, October 30, 1929.

Leo Friedman
by A. L. Barttell
Attorney for defendant.

SAMUEL W. McNABB,
United States Attorney,
Gwyn S. Redwine.
Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff and respondent vs J. W. ALFORD, Defendant and appellant	No. 9534-M

ORDER SETTLING, ALLOWING, SIGNING AND AUTHENTICATING BILL OF EXCEPTIONS AND MAKING THE SAME PART OF RECORD.

The foregoing Bill of Exceptions, duly proposed by the defendant J. W. Alford, and duly agreed upon by the respective parties thereto, having been duly presented to the

court within the time allowed and required by law, and by the rules and orders of this court, duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth, and as containing all of the evidence and all of the proceedings relating to the trial, conviction, motion for a new trial and motion in arrest of judgment in said cause, and as the true Bill of Exceptions herein and the same is hereby made a part of the record in this cause.

Dated November 14, 1929.

Wm H Sawtelle
United States District Judge.

[Endorsed]: No. 9534-M-Criminal In the District Court of the United States, in and for the Southern District of California. The United States of America, plaintiff and Respondent, vs. J. W. Alford, Defendant and Appellant. Engrossed Bill of Exceptions. Copy of the within proposed Bill of Exceptions received September 5th, 1929, together with Notice of Presentation thereof. Samuel W. McNabb, United States Attorney By P. V. Davis Assistant United States Attorney Filed Nov 16 1929 R. S. Zimmerman, Clerk By R S Zimmerman, Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff,	
vs.	No. 9534-M
J. W. ALFORD, Defendant.	

ORDER EXTENDING TIME TO SERVE AND FILE BILL OF EXCEPTIONS.

Upon motion of Leo R. Friedman, attorney for defendant above named, and good cause appearing therefor, it is hereby ordered that said defendant may have to and including the 3 day of September, 1929, in which to serve and file his Bill of Exceptions herein and defendant's time to so serve and file his Bill of Exceptions is hereby extended to and including said 3rd day of September, 1929.

Dated August 3rd, 1929.

Wm H Sawtelle
United States District Judge.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Order Extending Time to Serve and File Bill of Exceptions Filed Aug-3 1929 R. S. Zimmerman, Clerk Louis J. Somers, Deputy Leo R Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA,

Plaintiff and respondent,

vs

J. W. ALFORD,

Defendant and appellant.

No. 9534-M

STIPULATION AND ORDER EXTENDING TIME TO SERVE AND FILE PROPOSED BILL OF EXCEPTIONS.

It is hereby stipulated by and between the United States of America, Plaintiff and J. W. Alford, defendant, that said defendant J. W. Alford may have to and including the 5th day of September, 1929, within which to prepare, serve, file and lodge his proposed Bill of Exceptions herein; and that the United States of America may have to and including the 16th day of September, 1929, within which to prepare its amendments to the Bill of Exceptions of defendant and that defendant may have to and including the 26th day of September, 1929, within which to engross and file the Bill of Exceptions and the amendments thereto and within which to have said Bill of Exceptions settled and allowed by the trial Judge.

Dated August 31st, 1929.

SAMUEL W. McNABB,
United States District Attorney

W. R. Gallagher
Assistant United States District Attorney

Leo R. Friedman
Attorney for defendant.

So ordered this 31st day of August, 1929.

Wm P James
District Judge.

Foregoing order signed by said District Judge in the absence of the Honorable William H Sawtelle, who presided at the trial of said action.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford. Stipulation and Order Extending Time to Serve and File Proposed Bill of Exceptions. Filed Aug 31 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff and respondent, vs J. W. ALFORD, Defendant and appellant.	No. 9534-M

ORDER EXTENDING TERM OF COURT.

On motion of Leo R. Friedman, attorney for defendant above named, and good cause appearing therefor:

It is hereby ordered that the term of court within which the above entitled cause was tried be and the same is hereby extended to and including the 30th day of September, 1929.

Dated September 5th, 1929.

Wm P James
United States District Judge.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford, Order Extending Term of Court. Filed Sep 5 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff,	
vs.	No. 9534-M
J. W. ALFORD, Defendant.	

STIPULATION AND ORDER EXTENDING TIME TO PROPOSE AMENDMENTS TO BILL OF EXCEPTIONS AND EXTENDING TERM OF COURT, ETC.

It is hereby stipulated by and between the parties above named that the United States of America, plaintiff and

respondent herein named may have to and including September 30, 1929, within which to serve and file its proposed amendments to the proposed bill of exceptions in the above entitled cause.

It is further stipulated that J. W. Alford, the defendant above named, may have to and including the 20th day of October, 1929, within which to engross and file the bill of exceptions and the amendments thereto and within which to have said bill of exceptions settled and allowed by the trial judge.

It is further stipulated that the term of court within which the above entitled cause was tried be and the same is hereby extended to and including the 31st day of October, 1929.

Dated: September 11th, 1929.

SAMUEL W. McNABB
United States Attorney
P. V. Davis
P. V. DAVIS
Assistant United States Attorney,
Attorneys for Plaintiff.
Leo R. Friedman
LEO R. FRIEDMAN
Attorney for Defendant

IT IS SO ORDERED:
Wm P James
United States District Judge

[Endorsed]: No. 9534-M. In the District Court of the United States in and for the Southern District of California, Central Division. United States of America, Plaintiff, vs. J. W. Alford, Defendant. Stipulation and Order Extending Time to Propose Amendments to Bill of

Exceptions and Extending Term of Court, Etc. Filed Sep 14 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

UNITED STATES OF AMERICA,	)	No. 9534 M
	)	STIPULATION
Plaintiff,	)	EXTENDING TIME
vs.	)	FOR SERVING AND
	)	FILING PROPOSED
J. W. ALFORD,	)	AMENDMENTS TO BILL
	)	OF EXCEPTIONS.
Defendant.	)	

IT IS HEREBY STIPULATED that the time within which the Government may serve and file its proposed amendments to the proposed bill of exceptions in the above entitled cause is hereby extended until and including the 15th day of October, 1929.

IT IS FURTHER STIPULATED that defendant J. W. Alford may have to and including the 5th day of November, 1929, within which to engross and file the bill of exceptions and the amendments thereto and within which to have said bill of exceptions settled and allowed by the trial judge.

IT IS FURTHER STIPULATED that the term of court within which the above entitled cause was tried be

and the same is hereby extended to and including the 16th day of November, 1929.

Dated: September 27, 1929.

SAMUEL W. McNABB,
United States Attorney.

P. V. Davis

P. V. DAVIS,
Assistant United States Attorney,
Attorneys for Plaintiff.

Leo R Friedman

LEO R. FRIEDMAN,
Attorney for Defendant.

September 30 1929.

IT IS SO ORDERED:

Wm P. James
United States District Judge

[Endorsed]: In the District Court of the United States for the Southern District of California Central Division United States of America, Plaintiff, vs. J. W. Alford, Defendant. Stipulation Extending Time for Serving and Filing Proposed Amendments to Bill of Exceptions. Filed Sep 30 1929. R. S. Zimmerman, Clerk. By B B Hansen Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.
Central Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs. No. 9534M

J. W. ALFORD,

Defendant.

STIPULATION AND ORDER EXTENDING TERM OF COURT, ETC.

It is hereby stipulated that J. W. Alford, the defendant above named, may have to and including the first day of December, 1929, within which to have the bill of exceptions in the above cause settled and allowed by the trial judge.

It is further stipulated that the term of court within which the above entitled cause was tried be and the same is hereby extended to and including the first day of December, 1929.

Dated: November 5th, 1929.

SAMUEL W. McNABB
United States Attorney
By Gwyn S. Redwine
Assistant United States Attorney
Leo R. Friedman
Attorney for Defendant.

November 6th, 1929.
IT IS SO ORDERED.
Wm P. James
United States District Judge.

[Endorsed]: Original No. 9534M In the District Court of the United States, in and for the Southern District of California, Central Division. The United States of America, Plaintiff, vs. J. W. Alford, Defendant. Stipulation and Order Extending Term of Court, Etc. Filed Nov 6 1929 at 45 min. past 4 oclock p m R. S. Zimmerman, Clerk F W Jones Deputy Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs

J. W. ALFORD,

Defendant.

NO. 9534-M

NOTICE OF APPEAL.

To the United States of America, Appellee, and to Samuel W. McNabb, United States Attorney in and for the Southern District of California, as attorney for said appellee:

You and each of you will please take notice that the above named defendant J. W. Alford, hereby appeals to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment entered in said cause

against said defendant on August 3rd, 1929, and that the certified copy of record will be filed in the said United States Circuit Court of Appeals within the time and as provided by law.

Dated, August 3rd, 1929.

Leo R Friedman
Attorney for defendant.
1350 Russ Building, San Francisco, Calif.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford, Notice of Appeal Copy of within Notice of Appeal received this 3rd day of August, 1929 S. W. McNabb Donald Armstrong Attorneys for United States Filed Aug 3- 1929 R. S. Zimmerman, Clerk By Francis E. Cross, Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, vs. J. W. ALFORD, Defendant.	NO. 9534-M

PETITION FOR APPEAL AND SUPERSEDEAS

Now comes J. W. Alford the defendant above named, through his attorney Leo R. Friedman, and feeling himself

aggrieved by the judgment of this Court made and entered on the 3rd day of August, 1929, in the above entitled cause herein and whereby this defendant is sentenced to be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment reference is hereby made for greater particularity, your petitioner says that he is advised by his counsel and therefore avers that there was and is manifest error in the record and proceedings had in said cause and in the making, rendition and delivery of said judgment and sentence, and each of them, to the injury and damage of your petitioner, all of which errors may be fully made to appear by an examination of the assignment of errors filed herein and presented herewith.

And said J. W. Alford does hereby petition this Honorable Court for an appeal herein to the United States Circuit Court of Appeals in and for the Ninth Circuit, and that a full, true and correct transcript of the record and proceedings in said cause be transmitted by the Clerk of this Court to the Clerk of the said United States Circuit Court of Appeals; and that during the pendency of this appeal all proceedings had by this Court be suspended, stayed and superseded, and that during the pendency of said appeal said defendant be admitted to bail in such sum as to this Court seems meet and proper.

Dated at Los Angeles, California, August 3rd, 1929.

Leo R Friedman.

Attorney for defendant.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs. J. W. Alford. Petition for Appeal and Supersedeas Filed Aug 3- 1929 R. S. Zim-

merman, Clerk By Francis E. Cross, Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

The UNITED STATES OF AMERICA, Plaintiff, vs. J. W. ALFORD, Defendant.	CASE NO. 9534-M

ASSIGNMENT OF ERRORS

J. W. Alford, defendant in the above entitled cause and plaintiff on appeal herein having petitioned for an order from said Court permitting him to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment and sentence entered in the above entitled cause against him and said defendant having duly given Notice of Appeal as provided by law, now makes and files with his said Petition for Appeal the following assignment of errors herein, upon which he will apply for a reversal of said judgment and sentence upon appeal and which said errors and each of them are to the great detriment, injury and prejudice of said defendant, and in violation of the rights conferred upon him by law;

and said defendant says that in the record and proceedings in the above entitled cause upon the hearing and determination thereof in the Central Division of the United States District Court, for the Southern District of California, there is manifest error in this, to-wit:

1.

That the above entitled Court erred, to the substantial prejudice of said defendant, in its order overruling and denying in part defendant's demand for a Bill of Particulars to the indictment herein. To which order defendant duly excepted.

2.

That the defendant was tried and convicted in violation of the fifth amendment to the Constitution of the United States.

3.

That the Court erred in denying the motion of defendant for a directed verdict of not guilty upon all the counts upon which he was on trial, which said motion was made at the close of the Government's case and more fully appears as follows:

MR. FRIEDMAN: That being so, at this time, and likewise in further pursuance of our understanding, I move the court now, at the close of the Government's case in chief, on their resting, on behalf of the defendant in this case, that the court instruct and direct the jury to find and return a verdict finding the defendant not guilty upon all the remaining counts in the indictment, which I understand are counts 1, 2, 5 and 6. Is that right?

MR. ARMSTRONG: Yes.

MR. FRIEDMAN: I so move upon the following grounds, to-wit:

1. That the evidence introduced by the Government is insufficient to support either a verdict or a judgment of guilty, if such verdict or judgment were found, given or made or rendered against said defendant on any of said counts.

2. That no offense sought to be charged in the indictment here, or any count thereof, has been proved by the Government.

3. That the evidence so adduced fails and is insufficient to prove the plan, scheme or artifice set forth in said indictment, or in any count thereof.

4. That the evidence so adduced fails and is insufficient to prove the plan, scheme or artifice as specified in the bill of particulars furnished by the Government, or as declared by the Government and as set forth in the minute order of Judge James allowing or granting in part defendant's motion for a bill of particulars.

5. That the evidence so adduced by the Government does not exclude every other hypothesis except that of guilt on the part of defendant, and is as consistent with his innocence as it is with his guilt.

6. That the evidence so adduced by the Government fails to establish the falsity of any representations alleged to have been made by defendant or that defendant knew said representations were false or that any promises or representations made by him as to future events or happenings or conditions to be by him performed were so made with the intent not to perform the same on the part of the defendant.

7. That the evidence so adduced by the Government fails and is insufficient to prove an intent to defraud on the part of the defendant.

8. That the evidence so adduced by the Government fails and is insufficient to prove that the letters set forth in said indictment, or any count thereof, were mailed within the jurisdiction of this court.

9. That the evidence so adduced by the Government fails and is insufficient to prove that the letters set forth in the indictment, or in any count thereof, were mailed for the purpose of executing or attempting to execute or in furtherance of the alleged plan, scheme or artifice as set forth in the indictment.

10. That the evidence so adduced by the Government establishes that each letter set forth in each count of the indictment was mailed after any alleged plan, scheme or artifice on the part of the defendant had been terminated and abandoned.

11. That there is a fatal and material variance between the allegations of the indictment and the allegations of each of the counts thereof and the evidence and proofs adduced by the Government.

(Argument of Counsel)

THE COURT: As I read the indictment, I think the allegations with reference to the Ten-Way-To-Win Syndicate are merely elements of the scheme set forth in the indictment. And, as stated in the Mathews case, to which reference has been made, a scheme may be made up of many elements. If so, it is necessary to prove a sufficient number of them so that the jury may be justified in finding the existence of the scheme, but no particular element need be proved if other elements proved are sufficient to establish the scheme.

I will overrule the motions.

MR. FRIEDMAN: An exception.

4

That the Court erred in denying the motion of defendant for a directed verdict of not guilty upon all the counts upon which he was on trial made at the close of all the testimony in the case, which said motion more fully appears as follows:

MR. FRIEDMAN: At this time, pursuant to the statement just made by the court, and at the close of the taking of all the testimony in the case by both sides, the defendant respectfully moves the court to instruct and direct the jury to find and return a verdict finding the defendant not guilty upon all of the remaining counts. The counts now remaining in the indictment, I understand, are counts 1, 2, 5 and 6.

THE COURT: Let us see if that is correct. Will you gentlemen agree on that? The remaining counts are 1, 2, 5 and 6. Is that correct?

MR. ARMSTRONG: Yes. Those are the counts now remaining. Counts 3 and 4 have been withdrawn.

THE COURT: Counts 1, 2, 5 and 6. Very well.

MR. FRIEDMAN: Our motion is made upon the following grounds, to wit:

1. That the evidence introduced in the case is insufficient to support either a verdict or judgment of guilty, if such judgment or verdict of guilty were found, given or made or rendered against said defendant on any of said counts;

2. That no offense sought to be charged in the indictment herein or any count thereof has been proved by the Government or established by any of the testimony in this case;

3. That the evidence so adduced, and all of it, fails and is insufficient to prove the plan, scheme or artifice set forth in said indictment or each or any count thereof;

4. That the evidence so adduced, and all of it, fails and is insufficient to prove the plan, scheme or artifice as specified in the bill of particulars furnished by the Government or as declared by the Government and as set forth in the minute order of Judge James allowing and granting in part defendant's motion for a bill of particulars;

5. That the evidence so adduced, and all of it, does not exclude every other hypothesis except that of guilt on the part of the defendant and is as consistent with his innocence as it is with his guilt;

6. That the evidence so adduced, and all of it, fails to establish the falsity of any representations alleged to have been made by defendant, or that defendant knew said representations were false or that any promises or representations made by him as to future events or happenings or occurrences were so made with the intent not to perform the same or any of them on the part of defendant;

7. That the evidence so adduced, and all of it, fails and is insufficient to prove an intent to defraud on the part of the defendant;

8. That the evidence so adduced, and all of it, fails and is insufficient to prove that the letters set forth in said indictment or in any count thereof were mailed within the jurisdiction of this court;

9. That the evidence so adduced, and all of it, fails and is insufficient to prove that the letters set forth in the indictment, or in any count thereof, were mailed for the purpose of executing or attempting to execute or in fur-

therance of the alleged plan, scheme or artifice set forth in the indictment.

10. That the evidence so adduced, and all of it, establishes that each letter set forth in each count of the indictment was mailed after any alleged plan, scheme or artifice on the part of the defendant had been terminated and abandoned.

11. That there is a fatal and material variance between the allegations of the indictment and the allegations of each of the counts thereof and the evidence and proofs adduced at this trial.

(Argument.)

THE COURT: The motion is denied.

MR. FRIEDMAN: To which we may have our exception.

THE COURT: Let the record show that the motion is made as of this time, that it is overruled and an exception is noted. Now you may proceed with your arguments, gentlemen.

5.

That the Court erred in limiting the cross-examination of the witness J. St. Paul White produced by the Government, which more fully appears as follows:

Q. Following those telegrams, Mr. White, did you execute a release or quit claim as asked for by Mr. Alford?

A. Yes.

Q. When did you do that?

A. May I refresh my memory?

Q. Yes.

A. August 17, 1927.

Q. August 17, 1927. These telegrams were in April, as I understand it. Between April and August, 1927, did you refuse to execute such a document for Mr. Alford or for Mr. Slack?

A. No.

Q. Did you couple any conditions of any kind to your executing such a document?

MR. ARMSTRONG: I don't see how that is cross examination, your Honor, as to something that transpired in August or between April and August, particularly in view of the fact that is quite apparent from the examination so far that this deal didn't go through.

MR. FRIEDMAN: Of course, I have offered no objection, but I don't know why Mr. White was put on by the Government. He was put on for some purpose. I am merely trying to find out for the benefit of the jury what that purpose was.

THE COURT: If that is the object of your examination, I will sustain the objection.

MR. FRIEDMAN: That is one object, and the other is to lay before the jury and develop it, the entire transaction that occurred between Mr. Alford and Mr. White as far as pertains to the Oklahoma land.

THE COURT: I will sustain the objection.

MR. FRIEDMAN: An exception.

6.

That the Court erred in receiving in evidence Government's Exhibit No. 15, over the objection of defendant and on the examination of the Government's witness John P. Broadhead as more fully appears as follows:

Q. BY MR. ARMSTRONG: Did you ever discuss that particular one with Mr. Alford?

A. As part of the literature that we handled, yes, I did. As a specific thing, just standing out separate and alone by itself, perhaps not, that I can remember.

Q. What was said between you and Mr. Mford in connection with it?

A. That he endorsed this manner of sales approach.

Q. BY THE COURT: How would you designate that? As a circular? I haven't seen it.

MR. ARMSTRONG: It is just a typewritten three page document, your Honor.

THE COURT: It is Exhibit 9.

MR. ARMSTRONG: It is Exhibit 9 for identification.

THE COURT: All right.

MR. ARMSTRONG: At this time, if your Honor please, I offer Government's Exhibit 9 for identification in evidence.

MR. FRIEDMAN: I will object to it on the ground the proper foundation has not been laid, in that it hasn't been shown that that particular document was ever shown to Mr. Mford or that he had any knowledge of it at all. And I will call the Court's attention to the witness's answer given just a few minutes ago in reply to the Court's query that, as to that particular paper, he couldn't say whether there was any conversation with reference to it or not.

THE COURT: He did state that, and then he also stated, as I recall, that it was approved by Mr. Mford.

A. Your Honor, as constituting part of the literature, it was approved by Mr. Mford.

THE COURT: Overruled.

(U. S. Exhibit No. 15)

MR. FRIEDMAN: An exception.

(Government's Exhibit 15 is attached hereto & made a part hereof.)

7.

That the Court erred in receiving in evidence during the direct examination of the Government's witness, John F. Broadhead, Exhibit No. 18, over the objection of defendant, all of which more fully appears as follows:

Q. With reference to the document you hold in your hand, Mr. Broadhead, do you recall ever having discussed that matter with Mr. Alford?

A. I do.

Q. Did he see that particular document?

A. He saw the copy of this document.

Q. Where did you discuss it with him, in his office?

A. In his office.

Q. Was anyone present besides you and Mr. Alford?

A. Mr. Jackson.

Q. About when would you say that was?

A. This, to the best of my memory, would have been about two weeks or three weeks after my engagement to Mr. Alford, approximately.

Q. Just state the substance of the conversation that took place there at that time with reference to this document.

A. The conversation, to begin with, was in reference to the operation of this as a principle. It was in the matter of printing. And the best up-to-the-minute information and encouragement—everything that we could get together that would be helpful in the matter of making sales. And I suggested this name "Sellergrams," which Mr. Jackson and Mr. Alford both felt was quite a fitting term to use.

And as a result of that, this copy of the Sellergrams came out, printed by the typist in the office.

MR. ARMSTRONG: The document entitled "Alford's Sellergrams," just identified by the witness, is offered in evidence.

MR. FRIEDMAN: To which we object as incompetent, irrelevant, and immaterial, and from the cursory glance I have been able to give to it, it appears it is not within the issues of the indictment or in the bill of particulars furnished by the Government.

THE COURT: There seems to be some pencil notations on it.

MR. ARMSTRONG: I am not offering the pencil notes; I am just offering the typewriten portion.

THE COURT: The objection is overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit 18 is attached hereto & made a part hereof)

8.

That the Court erred in admitting in evidence certain testimony on the direct examination of the Government's witness John P. Broadhead, over the objection of defendant, relative to what was subsequently Government's Exhibit No. 20 in evidence, as more fully appears as follows:

Q. I show you what purports to be a map, Mr. Broadhead, and ask you to examine that and state if you have ever seen that before.

A. I have seen copies of this map.

Q. Identical copies?

A. Identical copies, as nearly as I can perceive.

Q. In whose hands did you see those?

A. Mr. Alford's, first of all. It was part of our literature.

Q. Did you ever discuss that map with Mr. Alford?

A. Yes; in the progress of events.

Q. Did the maps all have the same coloring on them? It appears that certain red ink pen marks appear on them, and also certain crayon marks. Were those pen marks and crayon marks on the maps that you saw?

A. Some of the maps were marked in different ways. It seems that each salesman more or less would mark his map as he was pleased to. But it all bore out the general instruction from the office, under Mr. Alford, as to what was to be contained on the map.

MR. FRIEDMAN: I ask that go out as being the opinion and conclusion of the witness.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

9.

That the Court erred in denying the motion of defendant to strike out Government's Exhibit No. 15 in evidence made during the cross-examination of the witness John P. Broadhead, as more fully appears as follows:

Q. BY MR. FRIEDMAN: Will you state, Mr. Broadhead, in what manner Mr. Alford personally approved of this particular document, Government's Exhibit 15?

A. I have already told you that I could not say specifically that he did, to my knowledge; that is, that I did not present it to him.

Q. Then, as far as you know, this particular document, Government's Exhibit 15, was never approved by Mr. Alford?

A. It was approved by Mr. Alford as the general literature was approved, and constituting a part of it.

Q. I am asking you how Mr. Alford approved this document as a part of the general literature.

A. By giving his okay upon the whole of it.

Q. How did he do that?

A. By saying, "That is all right."

Q. Did he say to you that this document was all right?

A. I have already stated that I did not—I cannot say specifically concerning this paper.

Q. That is what I am trying to confine myself to.

A. I have answered that three times.

Q. I am not attempting to argue with you. You would state, then, that he approved it in general with all the other literature?

A. Yes?

Q. Then I asked you to explain to the jury how he approved all the literature.

A. You asked me how he approved this Exhibit 15.

Q. Yes.

A. That is your question. You didn't ask how he approved all the literature. I told you he approved it all in general, because it was added to from time to time, and he would say that this was okay, and he would hand it back to me and say, "That is okay; fine; go ahead."

Q. That was the way he approved the literature that was to be given to salesmen?

A. After he had read it through, yes.

Q. But you don't know of your own knowledge whether Mr. Alford approved Government's Exhibit 15 or not?

MR. ARMSTRONG: I am going to object to that. *I* has been asked and answered several times.

THE COURT: Objection sustained.

MR. FRIEDMAN: If your Honor please, at this time, on the direct and cross-examination of the witness, I move that Government's Exhibit 15 be stricken from the testimony and from the record and the jury be instructed to disregard it on the ground the proper foundation has not been laid for its admission, and on the further ground there is no proof showing this was ever presented to or approved by Mr. Alford or that he ever had any knowledge thereof.

MR. ARMSTRONG: If your Honor please, in cases of this kind a defendant is bound by the acts and declarations of his agents.

THE COURT: I will overrule the objection. I don't care for any argument.

MR. FRIEDMAN: An exception.

10.

That the Court erred in receiving in evidence Government's Exhibit No. 23, on the direct examination of the witness C. L. Brubaker, over the objection of defendant as more fully appears, as follows:

Q. I now show you another Sketch of Sales Talk and ask you to examine that and state if you ever saw that before?

A. Yes, sir.

Q. Where?

A. It was given out—I believe this one in particular was handed to me by Mr. Jackson about two weeks after my connection there.

Q. Did you discuss that particular document with Mr. Alford: that particular document?

A. At that time is when I brought up the question of how or what the client would have for his representation.

Q. What do you mean by that: for his representation?

A. Well, what kind of a deed or what he would have. This second one is to a very great extent a reproduction of the first.

MR. FRIEDMAN: I ask that go out as the witness' conclusion.

THE COURT: That may be stricken. But what are you referring to now, which exhibit?

MR. ARMSTRONG: This has not been offered yet, your Honor. It has not been marked at all.

THE COURT: Very well.

Q. BY MR. ARMSTRONG: You say that was given to you by Mr. Jackson?

A. I think this second one was handed to me by Mr. Jackson.

Q. I didn't quite get your answer, as to whether you did talk to Mr. Alford about it or not.

A. Yes, sir.

Q. You did?

A. Yes; when I got this I asked him—

Q. We will come to that in a moment, Mr. Brubaker.

MR. ARMSTRONG: I want to offer this in evidence at this time as Government's Exhibit.

THE COURT: Well, I think that—

MR. ARMSTRONG: I will go ahead further, your Honor.

THE COURT: Go ahead. I have no objection. Is there any objection?

MR. FRIEDMAN: This is the second one you have shown the witness?

MR. ARMSTRONG: Yes; that is right. The first one I showed him was Exhibit 15.

MR. FRIEDMAN: I will object to this on the ground it is incompetent, irrelevant and immaterial and the proper foundation has not been laid, and there is no showing Mr. Mford knew of that or ever saw it.

THE COURT: He has just testified he took it to him and discussed it with him. That is the way I understood the witness.

MR. FRIEDMAN: I didn't understand it that way.

THE COURT: Do you still object to it?

MR. FRIEDMAN: Not upon that ground. I will object to it on the general ground it is incompetent, irrelevant and immaterial and not within the issues of the indictment or the bill of particulars furnished by the Government.

THE COURT: I have read a portion of it, sufficient to see it is material. I will overrule the objection.

(Government's Exhibit 23 is a condensed version of U. S. Exhibit 15.)

II.

That the Court erred in admitting in evidence Government's Exhibit No. 20, over the objections of defendant as more fully appears as follows:

Q. At about what date, as nearly as you can recall it?

A. At the time the map was given to us; and I wanted to know who the Mercury Oil Company was.

Q. What did he say?

A. That was the name of the J. W. Alford Company drilling in the name of the Mercury Oil Company.

Q. Did you pass that information on to your clients?

A. Yes, sir.

MR. ARMSTRONG: At this time I offer in evidence Government's Exhibit 19 for Identification.

MR. FRIEDMAN: We will object at this time to the admission of the map until the locations thereon are explained.

THE COURT: He is merely offering it for identification.

MR. ARMSTRONG: It has been offered for identification and I am now offering it in evidence now.

MR. FRIEDMAN: I understood counsel was offering it in evidence.

Q. BY MR. ARMSTRONG: I will call your attention to the red pen and ink drawings or lines on the map and also the colored crayon marks on the map and ask you if you know who put those marks on?

A. I do.

Q. Who did it?

A. C. J. Jackson or C. G. Jackson; Carl Jackson.

MR. ARMSTRONG: The map is offered in evidence.

MR. FRIEDMAN: We will object to it on the grounds it is incompetent, irrelevant and immaterial and does not tend to prove or disprove any issues of the indictment and is not part of the res gestae and is without the specifications of the bill of particulars furnished by the Government.

THE COURT: For what purpose is it offered?

MR. ARMSTRONG: If your Honor please, there is a derrick or a diagram of a derrick marked "Mercury Oil

Company" right in the middle of the Panhandle Petroleum Acres.

THE COURT: Do you mean that you expect to show that?

MR. ARMSTRONG: No. It is on the map. There is a red arrow pointing to Panhandle Acres, and right in the middle of that is a derrick with the wording "Mercury Oil Company". Mr. Brubaker says Mr. Alford told him that was a well being drilled by the J. W. Alford Company.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

12.

That the Court erred in denying defendant's motion to strike out certain testimony given by the witness Paul Doring on his direct examination, relative to statements made to him by the salesman who sold him the land, all of which more fully appears as follows:

A. Yes. That was one of the points I tried to bring out very strongly. I questioned the title, and he said at that time they already had an abstract of title, and the title was already brought down to J. W. Alford & Company; and he even offered to show it to me, but I took his word for it.

MR. FRIEDMAN: At this time I move the Court to strike out that portion of the witness's testimony relative to any statements made by Miller, relative to the having of an abstract of title to the land and that they had bought all the land, on the ground no foundation has been laid for the same, in that it has not been shown that Mr. Miller had ever received any such instructions or had ever been told by Mr. Alford or anyone under Mr. Alford's direction to make such statements.

THE COURT: Objection overruled.

MR. FRIEDMAN: An exception.

13.

That the Court erred in admitting in evidence certain testimony, over the objection of defendant, on the direct examination of the witness, C. F. Bradley, as more fully appears as follows:

Q. Now, coming back to the question of development of drilling of the land, do you recall ever having heard Mr. Alford discuss that particular question?

A. Yes. I heard him mention it to different salesmen at different times. I don't recall I ever heard him say anything before a sales meeting in connection with that.

Q. But to salesmen individually?

A. Yes. There might have been possibly two or three or four salesmen together at the same time, or something of that sort.

Q. Did you hear him say that once or more than once?

A. More than once.

Q. What did he say about that?

MR. FRIEDMAN: We will object to that on the ground the proper foundation has not been laid.

THE COURT: Yes. Locate the time and place and who was present.

Q. BY MR. ARMSTRONG: Can you fix the approximate time of these particular conversations and the persons who were present?

A. I cannot fix the persons present. I would say an approximate time would be along about the first part of February, 1927.

Q. You don't remember who the salesmen were that you talked to?

A. No, sir; I cannot.

Q. Will you answer the question, please?

MR. FRIEDMAN: The same objection, if the Court please. There is no way in the world the defense can meet these statements unless we are told to whom they were made.

Q BY THE COURT: Do you remember where they were made?

A Yes, sir; they were made—if I may answer that question—

A A little louder, so counsel can hear you.

A. Yes. They were made at the office of J. W. Alford & Company in the Lincoln Building in this city.

Q. To the best of your recollection, to whom were they made?

A. I can't say, sir, other than they were made to different salesmen in groups of possibly three or four.

THE COURT: I will overrule the objection.

MR. FRIEDMAN: An exception.

Q BY MR. ARMSTRONG: Will you answer the question?

A. As I recall now, he said that he was getting ready to drill on some of the acreage in Oklahoma, and that he had sent Mr. J. O. Carter up to the acreage to get ready to move on the rig and other necessary materials.

Q. Do you recall whether or not during these conversations he said how soon it would be before he could drill it?

A. Right away. He said he had sent Mr. Carter up there to get the equipment and to move it onto the location.

14

That the Court erred in limiting the cross-examination of the witness Cameron E. Bradley as more fully appears as follows, to wit:

Q. 1927. Where do you live, Mr. Bradley?

MR. ARMSTRONG: That is objected to as immaterial and not proper cross-examination.

THE COURT: I cannot see the materiality.

MR. FRIEDMAN: Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have the right to elicit that on cross-examination. I may say that this is the first witness the Government has called that they have not elicited the address from.

THE COURT: I will sustain the objection.

Q. BY MR. FRIEDMAN: What is your business, Mr. Bradley?

A. My profession is an accountant, public accountant.

Q. What is your occupation now?

A. I am not doing anything at the present time on account of this case.

Q. On account of this case?

A. Yes.

Q. Do you live in Los Angeles?

MR. ARMSTRONG: That is objected to as immaterial and invading the Court's ruling.

THE COURT: I have ruled on that question.

MR. FRIEDMAN: I would like, if the Court please, our exception noted to the Court's ruling made yesterday after the jury retired to the effect that we could not inquire as to the present address and residence of the witness.

THE COURT: Very well.

15.

That the Court erred in admitting in evidence Government's Exhibit No. 4 as more fully appears as follows, to-wit:

Q. I will show you a letter dated May 18, 1927 which is Government's Exhibit 4 for identification, and ask you to examine the letter and the envelope and state whether or not you received that letter in that envelope on or about the date the letter bears.

A. Yes, I received that.

Q. And you received both of them through the mails?

A. Yes.

MR. ARMSTRONG: The letter, being Government's exhibit 4 for identification, just identified by the witness, is offered in evidence in support of count 1 of the indictment.

MR. FRIEDMAN: To which we object, on the ground it is incompetent, irrelevant and immaterial; that the proper foundation has not been laid; that there has been no proof to show that the defendant Mford mailed or caused to be mailed, or authorized the mailing of, such a letter. There is no proof to show that the letter was mailed within the jurisdiction of this court; that it is apparent, the letter bearing date May 18, 1927, that the letter was not mailed in furtherance of or in pursuance or in attempted execution of any scheme or plan to defraud, as attempted to be set forth in the indictment or the bill of particulars on file herein, and upon the further ground that it is apparent the letter was mailed, on the face of it, from the date—that the letter was mailed after any alleged plan as proven or attempted to be proven by the Government in their case to defraud was abandoned, and

that it does not appear from the letter that it was written in execution of any scheme to defraud at all, and upon the further ground that the Government has failed to establish any scheme to defraud at all, either as alleged in the indictment or as described in the bill of particulars, or both, or otherwise, or at all.

THE COURT: Is that all?

MR. FRIEDMAN: I can't think of anything more, your Honor.

MR. ARMSTRONG: Would your Honor like to see the letter?

THE COURT: Is that Exhibit 4?

MR. ARMSTRONG: Yes.

THE COURT: I have that in mind. That was the letter that was mailed the 18th day of May, 1927?

MR. ARMSTRONG: Yes, your Honor.

THE COURT: The objection is overruled. It may be admitted.

MR. FRIEDMAN: Exception.

(Government's Exhibit 4 received in evidence)

THE COURT: Proceed.

MR. ARMSTRONG: Government's Exhibit 4, gentlemen, is a letter on the letterhead of J. W. Alford & Company, dated May 18, 1927, addressed to this witness:

"We would like to discuss with you personally a matter of importance, and with that end in view, would request that you drop in our office at your earliest convenience and see either the writer or Mr. Jackson or Mr. Russell.

"Thanking you in advance for your attention to this request, we are,

"Very truly yours,

"J. W. ALFORD & COMPANY

"By J. W. Alford."

The envelope is post marked "Los Angeles, May 18th," addressed to this witness.

16.

The Court erred in admitting in evidence the letter marked Government's Exhibit No. 5, over the objection of defendant as more fully appears as follows, to-wit:

Q. I show you a letter dated May 24, 1927, which is Government's Exhibit 5 for Identification, and addressed to yourself. I will ask you to examine that letter and state whether or not you received that letter through the mails on or about the date the letter bears?

A. Yes, sir.

Q. The answer is yes?

A. Yes.

MR. ARMSTRONG: The letter just identified by the witness is offered in evidence in support of Count 2 of the indictment.

THE COURT: What is the exhibit number?

MR. ARMSTRONG: It is Exhibit 5 for Identification.

MR. FRIEDMAN: To which we object on the grounds it is incompetent, irrelevant and immaterial; that no proper foundation has been laid; that there has been no proof offered by the Government that this letter was mailed within the jurisdiction of this court or within the jurisdiction of the grand jury who returned this indictment. In that regard I will call the Court's attention to the fact that there was no envelope accompanying this letter; that it is identical in form to the letter written to Mr. McNeill, which, when not accompanied by the envelopes, do not show they were mailed within the jurisdiction of this court. And we object on the further ground there is no proof in

this record of any kind or character that Mr. Alford mailed or authorized the mailing of this letter to this person or to any other person; and that it is apparent from the date of the letter that the letter is not a letter written or mailed, if it were mailed, in execution of any alleged scheme to defraud as set forth in the indictment or otherwise. We object on the further ground that the date the letter bears is one which is after the proof disclosed by the Government's witnesses shows that this entire transaction or alleged scheme to defraud, if there was one, was abandoned or terminated.

THE COURT: I will overrule the objection and leave it to the jury to determine.

MR. FRIEDMAN: An exception.

(Government's Exhibit 5 received in evidence)

MR. ARMSTRONG: Government's Exhibit 5, gentlemen, is on the letter head of J. W. Alford & Company, and is dated Los Angeles, May 24, 1927, and is addressed to Mr. Charles E. Hood.

"Dear Sir:

"We wrote you several days ago requesting you to stop in at our office, but not having heard from you, it is possible the letter may have gone astray.

"Having in mind the best interests of our clients and a desire to keep them fully informed regarding all phases of their investments, we would like to discuss with you personally a plan which we have perfected, covering your holdings, and one which we believe will be greatly to your benefit to seriously consider from a profit standpoint.

"Either Mr. Jackson, Mr. Russell or the writer will be at your service from 9 a. m. to 9 p. m. every day this week.

May we not have the pleasure of talking to you at your earliest convenience this week?

"Cordially yours,

"J. W. Alford & Company,

"By J. W. Alford."

THE COURT: That shows further there the initials of J. W. Alford and "D. W.", which Miss Weber says were her initials.

MR. ARMSTRONG: Yes.

17.

That the Court erred in admitting in evidence Government's Exhibit No. 16, over objection as more fully appears as follows, to-wit:

One John R. Gordon was called as a witness on behalf of the Government and among other things testified in substance as follows:

I, together with Miss Edith Skoog, agreed to buy through Mr. Aldrich, salesman for J. W. Alford & Company, one acre of land in Cimarron County, Oklahoma.

On this we paid only about the sum of Sixty ($60.00) Dollars and did not pay any more because as a result of a conversation with Mr. Alford we agreed not to make any more payments on this land and what we paid was to be credited on another proposition that Mr. Alford had offered us and which we had accepted. That we completed our payments on the second proposition some months before my receipt of Government's Exhibit 33.

I received the letter dated January 19th, 1928, through the mail on or about the date it bears.

The Government then offered in evidence the letter and its admission was objected to by defendant on the ground that the proper foundation had not been laid for it and that

there was no proof that the letter was ever deposited or caused to be deposited in the mails by the defendant. And on the further ground that no foundation had been laid and that there was no proof showing that the letter was ever written by or caused to be written by the defendant or deposited in the United States Postoffice by him, or under his direction.

The Court ordered the letters to be marked for identification and it was accordingly so marked as Government's Exhibit 33 for Identification.

Later in the trial one Cameron F. Bradley was called as a witness for the Government, who testified that the signature thereto was J. W. Alford's.

Thereupon the Government again offered the letter in evidence whereupon the defendant made the following objection:

MR. FRIEDMAN: Well, I will object to the introduction in evidence of the letter just offered by the Government, which is now marked No. 33 for identification, on the grounds that the proper foundation has not been laid, and it has not been shown that that letter was ever deposited in the mails or in the United States postoffice by the defendant, or by anyone under his supervision or control, or by his direction, and I will call the court's attention to the fact that it is expressly held in the case of Freeman vs. United States, reported in 20 Fed. Rep. 2nd, the mere fact that the signature is identified as that of any given person does not even raise an inference that that person mailed or caused that letter to be mailed.

After argument by counsel defendant made the further objection as follows:

MR. FRIEDMAN: I desire to renew my objection now as to the admission of this in evidence and ask the court to reverse its prior order, on the ground that it is incumbent on the Government, so far as this particular letter is concerned, to prove that it was deposited in the United States postoffice by the defendant, or under his direction.

The Court sustained the foregoing objections temporarily.

Later in the trial the witness Gordon was recalled by the Government and in reference to Governments Exhibit 33 for identification, testified in substance as follows:

That letter was received by me in the envelope attached to it.

The Government again offered this letter in evidence whereupon the defendant again objected to its introduction on all of the grounds advanced in opposition to its admission theretofore and upon the additional ground that it was a letter written in January, 1928, long after any scheme developed by the testimony existed and that it was apparent on its face and from the testimony that the letter was not written in the furtherance of or the attempted execution of any scheme to defraud as established by the evidence, or as set forth in the indictment and that it was so apparent that the letter was written relative to an entirely different matter and transaction.

The Court overruled the objection of defendant and admitted the letter in evidence which was marked Government's Exhibit No. 33, to which ruling of the Court the defendant took and noted an exception.

Government's Exhibit No. 33 is the letter set forth in the sixth count of the indictment and in substance reads as follows:

On the letterhead of J. W. Alford & Company and is dated Los Angeles, California, January 19, 1928, and is addressed to Mr. Gordon.

"I have your letter of even date. The several letters which you have writen me and to which you state that you have never had a reply.

"In this connection, permit me to state that I have written you on three different occasions requesting you to call for your certificates and to bring all of your contracts, receipts and agreements with you. Also I have phoned your residence on numerous occasions, but never seem to catch you at home. In fact, I have just put the phone done and am going to try this letter.

"You must have received the last letter I wrote, or you would not know the new address of 813 Chester Williams Building.

"Trusting that you will call with your papers at your earliest convenience, I am

"Very truly yours,

"J. W. ALFORD,

"J. W. ALFORD & COMPANY, Inc."

18.

That the Court erred in admitting in evidence Government's Exhibit 35, over objections of defendant as more fuliy appears as follows:

MR. ARMSTRONG: At this time, if your Honor please, I also offer in evidence Government's Exhibit 35 in support of Count 5 of the indictment.

MR. FRIEDMAN: What is Government's Exhibit 35?

MR. ARMSTRONG: That is the letter addressed to Edith Skoog.

MR. FRIEDMAN: Of course, we interpose the same objection to that as to the last letter offered by the Government (Exhibit 33) on the ground it is incompetent, irrelevant and immaterial and on the ground it is too remote in point of time. There is no showing at all that that letter has anything to do with any alleged plan or scheme as set forth in the indictment.

THE COURT: The objection is overruled.

MR. FRIEDMAN: An exception.

(Government's Exhibit 35 in evidence)

MR. ARMSTRONG: Government's Exhibit 35, gentlemen, is on the letterhead of J. W. Alford & Company, and is dated Los Angeles, California, January 12, 1928, and is addressed to Miss Edith E. Skoog.

"Not having heard from you, it is possible that the letter which I wrote you some days ago has gone astray.

"If such is the case I would be pleased to see you at your earliest convenience, in my offices at the above address, and I suggest upon your visit, you bring with you all your contracts, receipts, notes, and so forth.

"Thanking you in advance for your earliest attention to this matter, and with appreciation for your patience, support and confidence, I am

Very sincerely yours,

J. W. ALFORD"

In the lower left-hand corner are the initials "JWA H".

19.

The Court erred in permitting the Government to cross-examine the defendant when called as a witness in his own behalf on matters not embraced in his direct examination, over the objection of defendant as more fully appears as follows:

Q. Now, Mr. Alford, I show you this map, Government's Exhibit No. 20. As I understand it, you made that map, or at least you made the original from which—

MR. FRIEDMAN: That is objected to on the ground that it is not proper cross-examination.

MR. ARMSTRONG: You did not go into that on direct, but the defendant on his direct examination opened the field wide, as I understand it, by going into the question of good faith.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

(Question read.)

Q. BY MR. ARMSTRONG: The original from which that was made?

A. I compiled the rough draft of this map from newspaper—

Q. Just a moment.

A. Have you asked me a yes or no question?

Q. Yes.

A. The answer is yes.

Q. On the original that you drew, of which I take it this is a copy, did you place all of these derricks on the map?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Did you place that Mercury Oil Company in the middle of the land on that map?

A. Yes, sir.

Q. Now, just what did you think, when you made that map, that the salesmen would think and what prospective purchasers would think, when they saw a map of that

kind showing drilling activities all through there, and with reference to possible drilling activities on that land?

MR. FRIEDMAN: I object to the question as being incompetent, irrelevant and immaterial and not proper cross-examination what he thought or did not think or what somebody else would think. That certainly is a farfetched conclusion.

THE COURT: Yes. I think that is objectionable. He might ask him what he did.

Q. BY MR. ARMSTRONG: Mr. Alford, what was your idea in putting these derricks on that map?

A. May I explain that in my own words?

Q. Yes.

A. I drew it, or rather, I compiled it from data which I had at hand, including other maps, with a general idea of showing the development of activity in the whole Panhandle area. This map is a map of the Panhandle area; it includes part of Colorado, part of Kansas, part of Oklahoma and part of Texas. It was drawn with that purpose in mind, to show the activities and proposed activities in regard to drilling, as I had no way of determining about each producing well. I did not put that on. It was just something for the salesmen to carry to show that activity in Cimarron County, Oklahoma.

Q. Why did you put those derricks there?

A. To show the drilling activity and the proposed drilling activity in the known fields. I showed known fields on it with dots, because there were too many wells to spot with a derrick. The known fields, producing fields, are shown with small dots, and the location of drilling wells and proposed wells, gas wells, were shown with derricks, as near as I could possibly get the data.

Q. Why did you show all those three different classifications by derricks?

A. I knew of no other way of showing them, of showing by a picture map, a bird's eye view map, except by derricks.

Q. You have a legend on there?

A. I was very specific to see that that legend went on it, to state how many drilling wells were in Cimarron County.

Q. Couldn't you have divided that one classification up into three classifications?

MR. FRIEDMAN: I object to it, what the witness could have done. It is only material what he did do.

Q. BY MR. ARMSTRONG: All right. Now, with reference to this Mercury Oil Corporation, just what was that?

A. The Mercury Oil Company was a name that Mr. Carter and I decided to carry on our drilling operations under in Oklahoma State.

Q. That, as I understand it, was just a name which you two individuals used?

A. Yes, we proposed to use it and we did use it.

Q. Was that a corporation?

A. No.

Q. If you will notice on the legend, Mr. Alford, it states, "Mercury Oil Corp." What was your object in putting that there?

A. I could not say. That is probably an error by the draftsman who drew it.

Q. That was not on the original, I suppose?

A. What is that?

Q. That was not on the original?

A. No, I do not think so.

Q. You would not do that?

A. I do not think I would do it. I might have made a mistake and done that, but I do not remember doing it, because it was not a corporation.

Q. Now, you say that you did not know in the latter part of February just when you were going to drill this well?

A. No: I did not know exactly when I was going to drill it.

Q. Why did you put this derrick and Mercury Oil Company on that map right in the center of the Panhandle Petroleum Acres?

A. Well, I do not believe that it is in the center.

Q. Well, wherever it is.

A. I put it approximately where I expected to drill that first well, which is practically on a line between Sections 21 and 22, which would be embraced in my second release.

20.

That the Court erred in permitting the Government to cross-examine the defendant when so called as a witness on his own behalf on matters not embraced in his direct examination, over the objection of defendant as more fully appears as follows:

Q. I show you Governments' Exhibit 67, and will ask you if that is a letter you wrote?

A. Yes, I wrote that.

Q. You knew at that time that people were still making payments on their contracts?

MR. FRIEDMAN: That is objected to on the grounds it is incompetent, irrelevant and immaterial and not proper cross-examination.

THE COURT: Let me see that exhibit (Handing paper to court)

MR. FRIEDMAN: That is a letter written to Mr. Stromberg, which speaks for itself, as to what was stated in the letter. What he knew about anybody else doing or not doing at that time certainly has no bearing on this particular document.

THE COURT: The objection is overruled. What is the number of that?

MR. ARMSTRONG: It is Government's Exhibit 67, your Honor.

MR. FRIEDMAN: Your Honor overruled the objection?

THE COURT: Yes.

MR. FRIEDMAN: I desire to note an exception.

(Question read)

A. Yes, I knew it.

Q. BY MR. ARMSTRONG: In this letter you make this statement: "In this connection, I wish to state that at the time I purchased part of this ranch and contracted to purchase the balance"—Just what did you mean by that?

A. I meant I purchased and paid for 1680 acres and my contract covered the purchase of the balance of it.

Q. Did you feel that you owned 1680 acres of that land?

A. I figure to this day that I own half an interest in that 1680 acres of land and I am suing for it in Oklahoma today.

Q. Notwithstanding the fact that by this deed, dated the 1st day of March, 1927, you transferred the property to Mr. White?

A. I did, for his protection, my clients' protection and for my protection, and it so states in the contract.

Q. According to the terms of the contract?

A. Yes.

Q. You say: "It has always been my policy to fully protect such clients who back my knowledge, experience and integrity. Therefore, when this particular piece of property failed to measure up to my expectations and the representations made concerning same, I concluded that something which was not good enough for me was certainly not good enough to pass on to my friends and clients." And further, "In the event you still desire to own some of this land, I would respectfully refer you to Guy William Slack of Boise City, Oklahoma, the owner and with whom I cancelled my contract to purchase this land. I feel sure that he will be glad to sell you at a price of around $20 per acre."

A JUROR: What is the date of that letter?

MR. ARMSTRONG: July 28, 1927.

MR. FRIEDMAN: Was that last reading a question or were you just reading from the letter?

MR. ARMSTRONG: I was reading from the letter.

21.

That the Court erred in permitting the Government to cross-examine the defendant when called as a witness in his own behalf on matters not embraced in his direct examination, over objection of defendant as more fully appears as follows:

Q. BY MR. ARMSTRONG: You did not advise Mr. McNeill that you had cancelled your contract to purchase this land, did you?

MR. FRIEDMAN: Just a moment. I object to that on the ground that it is not proper cross-examination. If

there is any correspondence in evidence between this witness and McNeill, it speaks for itself.

MR. ARMSTRONG: I refer to Government's Exhibits 39 and 40.

THE COURT: I will overrule the objection.

Q. BY MR. ARMSTRONG: Did you tell Mr. McNeill that?

MR. FRIEDMAN: It is objected to again, your Honor, on the ground that notwithstanding the witness is being shown some letter that it is improper cross-examination.

THE COURT: Where a question covers one of the material elements where the defendant denies any wrongful intent, cross-examination is very liberal, more liberal than otherwise.

MR. FRIEDMAN: That is true, your Honor, nevertheless cross-examination must be confined to those things which were developed on direct examination. Counsel is now going into matters that occurred long subsequent to anything touched upon in the direct examination.

THE COURT: All that was introduced by the defendant in his testimony with reference to the subject can be rebutted by the Government, if the Government can do it.

MR. FRIEDMAN: That is true; but whether it can be rebutted or whether the defendant can be cross-examined on it, are two different things.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

THE WITNESS: I wrote both of those letters.

Q BY MR. ARMSTRONG: I did not ask you that.

A. What was it?

Q. Did you tell Mr. McNeill, at the time he was making his payment, after July, that you had cancelled your contract with Mr. Slack?

A. I wrote him the same form letter that I wrote to all of the people.

Q. And told him that you had cancelled your contract?

A. That I had concluded to abandon the project in its entirety.

Q. And he sent his payments just the same?

A. Yes, sir.

Q. What is the date of that letter?

A. I do not recall the date of that letter, but the early part of July or the latter part of June, or the middle of June.

Q. Was it a letter similar to the letter you wrote to Mr. Stromberg?

A. Somewhat similar, yes. I would say it was practically identically the same with the exception of one or two personal matters in it regarding the amounts and the number of acres.

Q. Notwithstanding that, you wrote him on July 22, 1927, and I am reading from Governments Exhibit 40, "I am indeed sorry that this confusion has arisen and trust that this communication will adjust matters to your entire satisfaction, and I herewith acknowledge receipt from you of the total sum of $160, leaving a balance of $40 due in installments of $20 on August 19th and September 19th, 1927."

A. May I look at that a moment?

Q. You certainly may.

A. Then can I explain it after I read it?

Q. Yes.

A. I had found in checking over the bookkeeping, the records of my bookkeeper, that Mr. McNeill had not made certain payments in his contract, that is, after he had refused to accept his money back—he had his own ideas regarding the value of the property—I found that my bookkeeper had stolen that amount of money, or rather, that particular payment—

22.

That the Court erred in permitting the Government to cross-examine the defendant when called as a witness in his own behalf on matters not embraced in his direct examination, over objection of defendant as more fully appears as follows:

Q BY MR. ARMSTRONG: I show you a letter, Government's Exhibit 67, and ask you if you wrote a similar letter to Mr. McNeill?

MR. FRIEDMAN: Objected to on the grounds it is incompetent, irrelevant and immaterial and not proper cross-examination.

THE COURT: The objection is overruled.

MR. FRIEDMAN: I desire to note an exception.

A. I would say that I did.

Q. You did?

A. Yes, sir.

23.

That the Court erred in limiting the cross-examination of Government's witness J. St. Paul White, when called in rebuttal, as more fully appears as follows:

Q Are you interested in the Capital Assets Corporation?

MR. ARMSTRONG: Objected to as not cross-examination.

THE COURT: The objection is sustained.

MR. FRIEDMAN: I might state the purpose of it—may I state the purpose of it rather? It is simply to show that it will be disclosed that this witness had some interest in it, and it is in evidence in this case.

THE COURT: That would not affect the ruling on the question unless you show the materiality of it. You could not do that before the jury, and the jury may be excused.

Thereupon the jury was excused, whereupon the following proceeding took place.

THE COURT: You may now make your avowal.

MR. FRIEDMAN: My understanding is that the Capital Assets Corporation, about which I wish to ask the witness, is a corporation in which Mr. Alford has rather a large interest; that Mr. White has an interest in it and through a series of deeds executed by Mr. White these 1680 acres are now, according to the record, vested in the Capital Assets Corporation which, at the present time, is maintaining suits in the courts of Oklahoma to quiet title to these acres.

THE COURT: What has that to do with the case?

MR. FRIEDMAN: Well, I will have to make the statement that I made when the witness was on the stand before. It is merely information that has come to me and I cannot vouch for the truth of it, but I believe that the transfers were without consideration and that the land, as a matter of fact, is still Mr. White's land and that suits are being brought to quiet title as against these contracts and as against Mr. Alford.

THE COURT: The objection will be sustained.

MR. FRIEDMAN: And I desire to note an exception.

24.

The Court erred in failing to give the following instructions which were requested by the defendant.

"DEFENDANT'S REQUESTED INSTRUCTION NO. 10

"It is incumbent on the Government to prove that the representations, pretenses and promises alleged in the indictment to have been made by the defendant were made by him and that such pretenses, representations and promises were untrue and known by the defendant to have been untrue at the time of the making thereof or that the defendant in making any of said alleged promises did not, at the time of the making thereof, intend to fulfil such promises.

If you find that any promises made by the defendant were not fulfilled by him or that any representations as to future events did not occur as represented this, in and of itself, is not sufficient to establish the fact that the defendant did not intend to fulfill such promise or that he knew such representation to be false. In addition to the proof that such promise was not kept or that such representation was not fulfilled there must be evidence to establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled.

If there is any reasonable doubt in your minds as to whether any representation or promise made by the defendant was made by him in good faith and with an honest belief that such representation or promise would be fulfilled, you must resolve such doubt in favor of the defendant and find that such representation or promise was neither false or fraudulent.

Post vs. U. S. 135 FED. 1, 6."

"DEFENDANT'S REQUESTED INSTRUCTION NO. 12.

"The mere fact that defendant was unable to refund all the money he had received does not constitute any proof of a scheme to defraud.

Faulkner vs. U. S. 157 FED 840."

The defendant regularly and duly excepted to the refusal of the Court to so instruct the jury as requested with his proposed instructions No. 10, 12, which exceptions were made in open court at the conclusion of the charge of the Court, in the presence of the jury and prior to their retirement as more fully appears in the assignment of error herein, relative to the exceptions taken to the charges given by the Court.

25.

That the Court erred in instructing the jury as follows:

"The scheme to defraud and the means by which it was to be carried out are to be distinguished from each other. As stated, the gist of the offense is the use of the mails in execution of the scheme to defraud. It is essential to prove the existence of the scheme. The scheme may be made up of many elements. If so, it is necessary to prove a sufficient number of the elements of the scheme so that the jury may be justified in finding the existence of the scheme. But no particular element need be proven if the other elements, when proven, are sufficient to establish the scheme."

And that the Court further erred in instructing the jury as follows:

"If the defendant intended to and did devise the scheme or artifice, as alleged, and did make false and fraudulent

representations and assurances for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, and of obtaining money by means of such false representations and pretenses, and for the purpose of executing such scheme, or attempting so to do, did place or cause to be placed the letters set forth in the several counts of the indictment in any post office or mail box of the United States in Los Angeles County, California, to be sent or delivered by the post office establishment of the United States, as alleged, then a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations. It may, however, be considered by the jury in connection with all the other evidence in the case in determining whether or not such representations, if made, were made with the intent to defraud as charged."

To each of which instructions the defendant excepted as appears as follows:

"MR. FRIEDMAN: Yes, your Honor, I have only one or two. I would like our exception noted to the Court's failure and refusal to give requested instructions 10, 12 and 14 on behalf of the defendant.

I would like to note an exception to that portion of your Honor's charge—and I make the exception more for the purpose of calling the same to your Honor's attention at this time and likewise for the purpose of preserving my record—which states in part that if there were any false representations as to the ownership of the land in Oklahoma and were made by the defendant knowing them to be false, which were followed by any depositing of letters by the defendant in the mails, and so forth. I

would like to note an exception on the ground there is no allegation in the indictment relative to any false representations as to ownership of land in Oklahoma."

"MR. FRIEDMAN: And in that same behalf, if your Honor please, I desire to note an exception to that portion of your Honor's charge wherein you instruct the jury that all the elements of the scheme need not be proved and that it is only necessary and will be sufficient if sufficient elements can be proved to establish the scheme. I make my exception on the ground that the instruction does not specify that the scheme cannot be established by elements other than those alleged in the indictment.

26.

That the Court erred in denying the motion of the defendant for a new trial to which ruling of the Court the defendant then and there duly and regularly excepted.

27.

That the Court erred in denying the motion of defendant in arrest of judgment to the denial of which motion the defendant then and there duly and regularly excepted.

WHEREFORE, for the many manifest errors committed by the Court the defendant through his attorney prays that said sentence and judgment of conviction be reversed; and for such other and further relief as may seem meet and proper.

Leo R. Friedman

Attorney for defendant.

GOVERNMENT'S EXHIBIT 15.

SKETCH OF SALES TALK ON PANHANDLE PETROLEUM ACRES

Approach:

"Mr. Jones, I wish to ask you just three questions, as upon your answers will depend whether we should take more of each other's time."

1. "You wish to make money, Mr. Jones, don't you?" (Mr. J. naturally says "Yes")

2. "Now Mr. Jones, if I can show you an outstanding opportunity in the way of a very small investment, whereby you should receive anywhere from 100% up, as a return, say in a year or less, ARE YOU FINANCIALLY PREPARED TO MAKE SUCH INVESTMENT?"

3. "If I can satisfy your mind, Mr. Jones, (You yourself to be sole judge and jury) with the soundness and profit of our proposition, WILL YOU MAKE SUCH INVESTMENT TODAY?"

Canvass:

Mr. Jones:

I am from the J. W. Alford Co. of which Company you probably know. We deal with a product that is the most essential for the human family in peace or war, today; that is, petroleum. In the oil-fields of America unquestionably the largest and most potential oil area is the "Panhandle Field."

You know, to win in the oil game, Mr. Jones the only way for you and me is to own the land outright, then contract with some responsible producer to drill that property at his own expense, and pay a royalty on all oil produced. (Show Sam G. Blythe's article) Mr. Alford, the

man whom I represent, has recently spent several weeks in what today is the greatest oil-field in the world; and by-the-way it is daily growing greater. You have heard of the Texas "Panhandle Field." Why Man, last May there was but one producing well, today there are 824, producing more than 150,000 barrels per day. (Show newspaper)

Before oil was discovered you or I could have bought these same acres outright for $100.00 per acre, or secured a 5 year commercial lease on an acre for $2.50. But since oil has been found, as high as $24,000.00. has been paid for one section 640 acres in Hutchinson County, Texas.

Panhandle Petroleum Acres offers you today a wonderful opportunity. At $100.00 per acre you have a golden chance, because I can take you into the office and show you one telegram after another offering large bonuses for leases, and numerous other wires offering to purchase large portions of the property at a larger figure than you are paying today.

Though we believe that this acreage is underlaid by the same pool that underlies Hutchinson County and the other counties that are productive in the Panhandle, we wish to do our own drilling consequently making many times more the amount of money than selling out in a solid block would make us. We believe in this property so strongly that we are spending $300,000.00 of our own money drilling on these same acres, therefore we are taking a much larger chance than we are asking you to take.

There is no question but that the J. W. Alford Co. is justly entitled to raise the price on their property which

they are offering to the investing public, but they feel that old and new clients should have a share in their good fortune, for the reason that, as they are in business to stay, they will make more money in the long run; and as they will have future propositions to sell, they want you to become one of them, knowing that, should they make you some real money on one investment you would come back again for more. You here have three chances to win: First in the way of oil on your acreage. Second, from the development of the town-site from Boise City, in your direction due to oil-production around it. Third, from the agricultural development of the surrounding country.

Have you heard of the Ramsey well, Mr. Jones? It is located to the north and east of our holdings, about 8 miles distant. They have just scratched the producing sand at a depth of 4200 feet and have 3000 feet of oil standing in the hold. They have not brought the well in yet owing to the absence of storage tanks on the ground, but are baling out the oil at the rate of 75 barrels per day. There is every reason to believe this well will be a real gusher. We have the same chance as Mr. Ramsey or other operators in the Panhandle Field for big production.

If the Ramsey well is the starter of another large pool (from this "Examiner" article, it appears that it will be) then Panhandle Petroleum Acres—the acreage I am going to select for you, has just the same chance to bring as much profit as did acreage surrounding the first well that brought in any of these big pools. Your chance for enormous profits, Mr. Jones, is literally unlimited. Then imagine the price-effect on all property, Mr. Jones, located anywhere, for miles around.

I want your check for $1000.00 Mr. Jones and I will help you select the best available acres, none of which will be more than 2 miles from the Company's drilling block—I am sure you never have had presented to you such an opportunity for money-making, and I know you want to take advantage of it NOW before these same acres go up in price, as they surely will, as the Company's drilling operations go forward.

Should even one well be a producer and realize we are spending better than $100,000. to make it so, you should be most handsomely compensated. Think what 10 acres would have meant to you on Signal Hill—or even one lot. You know the history of Signal Hill, then think of Burkburnett, Ranger, Mexia, and Hutchinson County, right here in the Panhandle—a 640 acre block sold for $24,000.000: It was nothing for acres to sell for as high as $100,000 per acre in the Burkburnett Field. Your acreage, here located should likewise bring you in a great deal of money.

(Please sign here, Mr. Jones)

* * * * * * * * *

We have field representatives who send us daily reports as to the progress being made in this territory. I want you to feel perfectly free to call up our office at any time to ascertain the facts about any point concerning which you wish to know; and I will keep in touch with you from time to time and give you any news which I may have.

By the way, Mr. Jones, if you have any friends whom you would like to get in on this proposition, I will be glad to interview them, as I am sure they will appreciate the opportunity, with you, to make some big money.

(Salesman: Get as many names as possible from any and all of your interviewed clients)

GOVERNMENT'S EXHIBIT 18.

"ALFORD'S SELLEGRAMS

"To get the BEST RESULTS out of anything, business or otherwise, we must first have KNOWLEDGE of that thing to such an extent that it sets us THINKING with a whirl. In other words, we must have KNOWLEDGE of our PRODUCT and most of all, be ENTHUSIASTIC about our products or business. If we lack these TWO ESSENTIALS to SUCCESS, then we are followers and not leaders.

To sell PANHANDLE PETROLEUM ACRES you must have some knowledge of OIL, LAND, INVESTMENTS and most of all ENTHUSIASM. If you do not BELIEVE IN PANHANDLE PETROLEUM ACRES, you cannot sell it.

Now the question arises where will we get our knowledge of PANHANDLE AREA and PANHANDLE PETROLEUM ACRES. J. W. Alford & Co. have been in business for a number of years and have been SUCCESSFUL. The OIL, LAND or the INVESTMENT business is not new to us. The Company has three men who do nothing but search for new DATA to pass on to you to help you build up your knowledge and that is why we have the morning meetings and why Mr. Hudson lectures every afternoon at two o'clock. Every day we may not have something new to pass on to you, but in these meetings something might be said that will enable you to get some business during the day which you might not have gotten otherwise and on order means a commission CHECK and that THRILL that goes with having YOUR NAME on the board with PRODUCTION behind it and

by-the-way boys, does it make you feel a little bad to see the other boys piling up productions on the board and you with nothing behind your own name?

The writer of this Sellegram could not work a week without getting something behind his name, even if he had to sell it to his wife or buy it himself. I would just simply have to have production or I would feel like turning in my kit and getting a job with the City digging ditches, because I know that with the PROPER KNOWLEDGE and ENTHUSIASM you can sell PANHANDLE PETROLEUM ACRES to anyone that you come in contact with. If I should run into a friend or acquaintance that told me that he didn't have $40.00, I would shame him until he told me when he would have the said $40.00 and when he imparted this information, I would take a $2.00 bill as a deposit on the acre that I had been so earnestly talking to him about and make him sign the order and then go back and collect the $38.00 the day on which he told me to come.

If you talk with SUPREME KNOWLEDGE of your proposition, no man will tell you that he hasn't $40.00. Pick that man that should have $40.00 and STAY with him for if you stay and keep SHOOTING FACTS and FIGURES to him, mixed up with some stories of how that man or woman or that ignorant negro that had no knowledge of oil or business had been made INDEPENDENT BY OIL, sooner or later he will pull out his check book, because every man, woman or child would like to have an INDEPENDENT FORTUNE and OIL has made more people independent than any other commodity in history. The only chance that a small investor has to become independent is to SPECULATE and OIL is the greatest

speculation as I have just said. PANHANDLE PETROLEUM ACRES offer to you and your clients the chance to speculate for huge profits with a very small capital and yet have your CAPITAL ABSOLUTELY SOUND, because each $100.00 represents a piece of mother earth which you own outright and control and that ACRE IS SURROUNDED BY THE BIG MAJOR OIL COMPANIES OF THE UNITED STATES TODAY; these Companies are spending hundreds of thousands of dollars to IMPROVE your property. This is the BEST CHANCE that the general public has every been offered for the reason it has the essentials of a SOUND INVESTMENT with the possibility of making the purchaser RICH. The man that you tell this story to cannot conscientiously turn you down. If he does, he is taking bread and butter out of the mouths of his wife and children. Don't be AFRAID to stand up and talk to your prospect. Tell him these FACTS about Panhandle Petroleum Acres and tell him with FORCE and ENTHUSIASM. Make him SEE your PROPOSITION AS you see it.

FEAR is the greatest enemy of mankind. FEAR is responsible for the fact that FIFTEEN PER CENT of the American Public has to carry the old age burdens of the EIGHTY FIVE PER CENT who are depending upon relatives or charity after they reach the age of sixty. Ask your prospect today, if he were to die, would his estate be big enough to take care of his family? If he answers 'No', tell him that $100.00 invested in PANHANDLE PETROLEUM ACRES, has that chance to make him INDEPENDENT.

Don't be afraid to talk, but don't talk yourself out of a sale. Have your MAPS before your prospect's eyes at all times and keep your ORDER BOOK open so that he knows that you mean for him to buy NOW. Don't let him put you off. FORTY-EIGHT HOURS MAKE ANCIENT HISTORY IN THE OIL BUSINESS. Close him while he is HOT.

Impress your prospects with KNOWLEDGE of your proposition. Be ENTHUSIASTIC and hold no FEAR that you cannot put it over, then watch your commission CHECKS pile up for that brings happiness to you and your family.

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[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Assignment of Errors Copy of within assignment of errors received this 3rd day of August, 1929. S. W. McNabb Donald Armstrong attorneys for United States Filed Aug 3—1929 R. S. Zimmerman, Clerk By Francis E. Cross, Deputy Clerk Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA, Plaintiff, vs. J. W. ALFORD, Defendant.	No. 9534-M

ORDER ALLOWING APPEAL SUPERSEDEAS AND BONDS.

Upon motion of the attorney of the above named defendant, and it satisfactorily appearing that said defendant has this day duly filed his Notice of Appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment made and entered in the above entitled cause against him on August 3rd, 1929, and said defendant has filed his Petition for an Appeal together with his Assignment of Errors:

It is ordered that an appeal be and the same is hereby allowed to have reviewed in said United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment and sentence heretofore entered in the above entitled action against said defendant, and that the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit a full, true and correct transcript of all records and proceedings in the above entitled cause.

And it is further ordered that the amount of the Court bond on said appeal be and the same hereby is fixed in the sum of Two Hundred Fifty ($250.00) Dollars conditioned as required by law and rules of this Court.

And it is further ordered that upon giving by said defendant J. W. Alford of a good and sufficient bond or undertaking in the sum of Five Thousand ($5,000.00) Dollars and conditioned as required by law and that defendant shall not depart from the state of California except that he may go to the state of Nevada, the rules of this Court all further proceedings in this Court be suspended and stayed as against said defendant J. W. Alford and that said defendant be released from custody until the final determination of said appeal by the said United States Circuit Court of Appeals or by the Supreme Court of the United States upon a petition for writ of certiorari.

Dated August 3rd, 1929.

Wm. H. Sawtelle
United States District Judge.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Order Allowing Appeal Supersedeas and Bonds Filed Aug—3 1929 R. S. Zimmerman, Clerk Louis J. Somers Deputy Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

UNITED STATES OF AMERICA, Plaintiff, vs. J. W. ALFORD, Defendant.	NO 9534 M. SUPERSEDEAS BOND ON APPEAL.

UNITED STATES OF AMERICA)
)
SOUTHERN DISTRICT OF CALIFORNIA.)

KNOW ALL MEN BY THESE PRESENTS:

That we, J. W. ALFORD, of the City of Los Angeles, State of California, as principal, and the PACIFIC INDEMNITY COMPANY, a California Corporation, with its principal office and place of business in Los Angeles, County of Los Angeles, State of California, as surety, are jointly and severally held and firmly bound unto the UNITED STATES OF AMERICA, in the sum of FIVE THOUSAND ($5,000.00) DOLLARS, for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

SIGNED AND DATED THIS 31 day of AUGUST A. D. 1929.

WHEREAS, lately, to wit: on or about the 31, day of August, A. D. 1929, at a term of the District Court of the United States, in and for the Southern District of

California, Central Division, in an action pending in said Court, between the United States of America, Plaintiff, and J. W. ALFORD, defendant, a judgment and sentence was made, given, rendered and entered against the said J. W. ALFORD, in the above entitled action, wherein he was convicted on Counts 1, 2, 5 and 6 of said indictment to violate Section 215 of the Federal Penal Code of the United States.

WHEREAS, in said judgment and sentence, so made, given and rendered and entered against said J. W. ALFORD, in said action, he was by said judgment sentenced to FIVE (5) Years in a Federal Penitentiary and to pay a fine aggregating Two Thousand ($2,000.00) Dollars.

The said J. W. ALFORD having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the United States Circuit Court of Appeals for the 9th, Circuit at San Francisco, California, in pursuance to the terms and at the time fixed in said citation.

WHEREAS, the said J. W. ALFORD, has been admitted to bail pending the decision upon said appeal, in the sum of FIVE THOUSAND ($5,000.00) DOLLARS.

NOW, THEREFORE, the conditions of the above obligation are such that if the said J. W. ALFORD shall appear, either in person or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in the said Court, and prosecute his appeal; and if the said J. W. ALFORD, shall abide by and obey all orders made by the United States Circuit Court of Ap-

peals, for the Ninth Circuit, in said cause; and if the said J. W. ALFORD shall surrender himself in execution of said judgment and sentence, if the said judgment and sentence be affirmed by the United States Circuit Court of Appeals, Ninth Circuit, and shall satisfy and discharge and pay any fine or fines which have been or may be imposed against him, and the Surety hereby bind and obligates itself to satisfy, discharge and pay any fine or fines which have been or may be imposed against the said defendant, J. W. ALFORD, immediately upon the coming down of the mandate, if the said defendant shall not forwith discharge the same, and if such obligations are fully discharged, then this recognizance shall be void; otherwise to remain in full force and effect.

WITNESS our hands at Los Angeles, California, this 3d, day of AUGUST, 1929.

J. W. ALFORD,
J. W. Alford, PRINCIPAL.
PACIFIC INDEMNITY COMPANY.
By F. V. Weede
ITS ATTORNEY-IN-FACT.
SURETY. (SEAL)

STATE OF CALIFORNIA,)
County of Los Angeles) ss.

On this 3d day of AUGUST in the year one thousand nine-hundred and TWENTY NINE, before me, JAMES B. COCHRAN, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared F. V. WEEDE, known to me to be the duly authorized Attorney-in-Fact of PACIFIC INDEMNITY COMPANY, and the same person whose

name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said F. V. WEEDE acknowledged to me that he subscribed the name of PACIFIC INDEMNITY COMPANY, thereto as principal, and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(SEAL) JAMES B. COCHRAN

Notary Public in and for Los Angeles County, State of California.

My Commission Expires *My Commission Expires* Nov. 2, 1929

APPROVED: AUG -5 1929

WM. P. JAMES

Judge, District Court of the United States, Southern District of California, Central Division.

The form of the foregoing bond is hereby approved. I hereby approve the within bond as to form.

AMES PETERSON,

Asst. U. S. Atty.

[Endorsed: 9534-M Crim. J. W. Alford—Supersedeas Bond on Appeal Filed Aug 5 1929 R. S. Zimmerman, Clerk By Murray E. Wire, Deputy Clerk.

Know All Men by these Presents,

That we, J. W. ALFORD, as principal and UNITED STATES FIDELITY & GUARANTY COMPANY, a Corporation, as sureties, organized and existing under the laws of the State of Maryland are held and firmly bound

unto UNITED STATES OF AMERICA in the full and just sum of TWO HUNDRED FIFRY AND NO/100 ($250.00)—dollars, to be paid to the said UNITED STATES OF AMERICA certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of August in the year of our Lord One Thousand Nine Hundred and Twenty-nine

WHEREAS, lately at a District Court of the United States for the Southern District of California, Central Division in a suit depending in said Court, between UNITED STATES OF AMERICA, versus J. W. ALFORD a Judgment was rendered against the said J. W. ALFORD and the said J. W. ALFORD having obtained from said Court AN ORDER ALLOWING AN APPEAL to reverse the JUDGMENT in the aforesaid suit, and a citation directed to the said UNITED STATES OF AMERICA citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty (30) days of August 3rd, 1929

Now, the condition of the above obligation is such, That if the said J. W. ALFORD shall prosecute his said Appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

J. W. Alford [Seal]

UNITED STATES FIDELITY & GUARANTY COMPANY [Seal]

BY E A Casebeer [Seal]
ATTORNEY-IN-FACT

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss:

On this 3rd day of AUGUST in the year one thousand nine hundred and TWENTY-NINE, before me, BESS B. BRADBURY, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared E. A. CASEBEER, known to me to be the duly authorized Attorney-in-fact of the UNITED STATES FIDELITY AND GUARANTY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company and the said E. A. CASEBEER duly acknowledged to me that he subscribed the name of the UNITED STATES FIDELITY AND GUARANTY COMPANY thereto as Surety and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Bess B. Bradbury [Seal]

Notary Public in and for LOS ANGELES County, State of California

My Commission Expires March 11, 1931

[Endorsed]: No. 9534-M United States District Court For the Southern Distrcit of California, Central Division United States of America vs. J. W. Alford Bond on Appeal (Costs) Form of bond and sufficiency of sureties approved. Wm H Sawtell Judge. Filed Aug -3 1929 R. S. Zimmerman, Clerk Louis J. Somers Deputy

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs
J. W. ALFORD,
Defendant.
NO. 9534-M

STIPULATION AND ORDER RELATIVE TO BILL OF EXCEPTIONS AND EXHIBITS

It is hereby stipulated by and between the attorneys for the United States and the defendant that all exhibits introduced in evidence in the trial of the above entitled cause and now in the custody of the Clerk of the above Court need not be set forth in the Bill of Exceptions of defendant, but shall be deemed to be included as a part of said Bill of Exceptions with the same effect in all respects as if incorporated in said Bill of Exceptions. In the event that the said exhibits are not so numbered so as to identify the same they shall be marked by the Court upon its certification of said Bill of Exceptions so as to identify the same.

It is further stipulated that all exhibits introduced in the above entitled cause may be marked by the Clerk of the above entitled Court and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

It is further stipulated that such of said exhibits as may be agreed upon by the parties hereto may be printed in book form to be used upon the presentation of this appeal in the United States Circuit Court of Appeals for the Ninth Circuit and such book form of said printed exhibits shall be considered as part of this Bill of Exceptions.

It is further stipulated that should the parties hereto fail to agree as to what exhibits should be so printed in book form then and in all events either party hereto may cause all of said exhibits to be printed in book form and such book form of all said printed exhibits shall be considered as part of said Bill of Exceptions.

Dated, 3rd day of August, 1929.

Leo R. Friedman
Attorney for defendant.

S. W. McNabb
United States Attorney

Donald Armstrong
Assistant United States Attorney.

The foregoing stipulation is hereby approved and it is so ordered accordingly.

Wm H Sawtelle
United States District Judge.

[Endorsed]: No. 9534-M District Court of United States Southern District of California Central Division United States of America vs J. W. Alford Stipulation and Order Relative to Bill of Exceptions and Exhibits Filed Aug -3 1929 R. S. Zimmerman, Clerk Louis J. Somers Deputy Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

UNITED STATES OF AMERICA,
Plaintiff and Respondent,
vs.) No. 9534-M
J. W. ALFORD,
Defendant and Appellant.

STIPULATION AND ORDER RELATIVE TO WITHDRAWAL OF EXHIBITS, ETC., FOR PURPOSE OF PRINTING RECORD.

It is hereby stipulated by and between the parties above named that the above entitled Court may make its order authorizing and directing the Clerk of the above entitled Court to turn over to the person designated by defendant and appellant as the one who is to print the transcript of the record on appeal all of the original records and exhibits in the above entitled cause to be used by such person in printing such record and that upon the completion of the printing of said record said original papers and exhibits to be returned to said Clerk.

SAMUEL W. McNABB
United States District Attorney
By P. V. Davis
Assistant United States District Attorney
Leo R Friedman
Attorney for Defendant and Appellant.

SO ORDERED this 21 day of November, 1929:

Wm P James

United States District Judge.

[Endorsed]: Original No. 9534-M In the District Court of the United States in and for the Southern District of California, Central Division. The United States of America, Plaintiff and Respondent, vs. J. W. Alford, Defendant and Appellant. Stipulation and Order Relative to Withdrawal of Exhibits, Etc., for Purpose of Printing Record. Filed Nov 21 1929 at.....min. past 5 o'clock P m R. S. Zimmerman, Clerk F W Jones Deputy Leo R. Friedman Attorney at Law Russ Building San Francisco, Cal.

PRAECIPE

District Court of the United States

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

vs

J. W. ALFORD

CLERK'S OFFICE

No. 9534-M

To the Clerk of Said Court:

SIR:

Please prepare transcript on appeal to include the following pleadings, paper, motions, proceedings and orders in the above entitled cause:

1. Indictment

2. Motion for Bill of Particulars and Order thereon and Bill as furnished and filed.

3. Record of the trial.
4. Verdict of the jury.
5. Motion for New Trial and Order denying same
6. Motion in Arrest of Judgment and Order denying same.
7. Sentence and Judgment.
8. Notice of Appeal
9. Petition for Appeal, Supersedeas and Order allowing same
10. Assignment of errors.
11. Bill of Exceptions.
12. Order Settling and Allowing Bill of Exceptions
13. Citation on Appeal.
14. This Praecipe.
15. All Stipulations and Orders extending time to propose, amend or settle Bill of Exceptions and extending term.
16. Stipulation and Order of August 3rd, 1929, in re Bill of Exceptions and Exhibits.
17. All Stipulations heretofore or hereafter filed and orders thereon relative to the printing as part of record. Exhibits introduced at trial.

Dated September 5th, 1929

Leo R. Friedman
Attorney for defendant.

Copy of the foregoing *citation* received this 5th day of September, 1929.

SAMUEL W. McNABB,
United States Attorney

By P. V. Davis
Assistant United States Attorney.

[Endorsed]: No. 9534-M United States District Court Southern District of California United States of America vs J. W. Alford Praecipe for Transcript on Appeal, Etc. Filed Sep 5 1929 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
J. W. ALFORD,
Defendant.

No. 9534–M.

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 486 pages, numbered from 1 to 486, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; indictment; motion for bill of particulars; order regarding motion for bill of particulars; bill of particulars; minutes of the court; verdict; sentence; motion for new trial; motion in arrest of judgment; bill of exceptions; notice of presentation of bill of exceptions; stipulation re settlement of bill of exceptions; order

settling bill of exceptions; orders extending time to file bill of exceptions; orders extending term of court; notice of appeal; petition for appeal and supersedeas; assignment of errors; order allowing appeal and supersedeas; supersedeas bond; cost bond; stipulation re exhibits; stipulation re withdrawal of exhibits, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to $7.50 and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 20th day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-nine, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
(Seal) United States of America, in
and for the Southern District of
California.
By Edmund L. Smith,
Deputy.

No. 6028

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. W. ALFORD,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the United States District Court for the Southern District of California, Central Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D., 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the twelfth day of February, in the year of our Lord one thousand nine hundred and thirty. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, Circuit Judge; Honorable CURTIS D. WILBUR, Circuit Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED appeal in above cause argued by Mr. Leo R. Friedman, counsel for the appellant, and by Mr. P. V. Davis, Assistant United States Attorney, counsel for the appellee, and submitted to the Court for consideration and decision, with leave to file further briefs 1x7.

At a stated term, to wit, the October Term, A. D., 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-sixth day of May, in the year of our Lord one thousand nine hun-

dred and thirty. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, Circuit Judge; Honorable CURTIS D. WILBUR, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, ORDERED that the opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court in above cause in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

WILBUR, Circuit Judge.—The appellant was convicted of using the mails to execute a scheme to

defraud in violation of 18 U. S. C. A., Section 358, Criminal Code, Section 215. Appellant claims that one of the essential elements of the scheme alleged in the indictment was not proved and that, therefore, he was convicted of a different scheme than that alleged in the indictment, and that thus his conviction is in violation of the fifth amendment of the Constitution (Art. V), requiring that prosecutions be instituted by indictment. To understand this contention the allegations of the indictment which are rather lengthy will be summarized. The alleged scheme was to secure money from the victims by representing to them that the appellant was drilling and would continue to drill a development well upon a large tract of potential oil land in Cimarron County, Oklahoma, of about 30,000 acres at a cost of $300,000; that the purchaser of such land from the appellant would secure by his grant deed to be executed when payment was completed a fee-simple title to the acre or more described in the contract of sale therefor which was to be executed by the appellant upon part payment of the purchase price. It is alleged that appellant did not have title to the land sold and that he had no intention of securing title; that he did not intend to execute a deed; that the appellant was not drilling an oil-well thereon as stated and he made the promise to continue to drill the development well without any intention of doing so. That is to say, he was to secure money by a fraudulent promise to convey land which he had no intention of conveying and by a fraudulent promise to drill a well he had

no intention of drilling, and by a false representation that he was in fact then drilling such a development well which he was not drilling. The misstatement as to actual drilling was capable of direct contradiction and was so contradicted. The fraudulent intent with which the promise to convey title, and to continue to drill a development well, were made was necessarily to be proved by circumstantial evidence. Many of the allegations of the indictment are statements of the evidence tending to prove that these promises were made fraudulently with no intention to perform the same. These other evidentiary features of the alleged scheme or plan, it will be observed, set forth a plan not intended to be disclosed to the public. Along this line it is alleged that on January 17, 1927, the appellant secured an option on said thirty thousand acres of land, which he had no intention of exercising; that the option required the payment of $25,200 in thirty-one days on February 18, 1927, whereupon a deed was to be given for 1680 acres. That another payment of $32,400 for 2,160 acres of the land was to be made by April 17, 1927, which he did not intend to make and which he did not and could not make. The evidence shows without any conflict that the appellant made the false representation that he was actually drilling a well. The jury were justified from the evidence in concluding that the appellant never intended to drill the well. They were also justified in concluding from the evidence that the appellant did not intend to convey the land he agreed to sell. On this subject the evidence

showed that the appellant merely had the option upon the land and that in order to perfect title to the acreage he sold it was essential that he make a payment by April 17, 1927, for which he had made no preparation and had no reasonable expectation of paying. It is true that the land he was to purchase at $15 an acre he was selling for $100 an acre by the false pretenses above mentioned, but the contracts were executed with a preliminary payment of 40 per cent down and of this 62½ per cent was paid for commission, leaving no substantial part of the payments to be applied to the next installment upon the option contract which was so soon to be due. This, and other evidence which need not be stated, justified the finding of the jury as to fraudulent intent of the appellant in making the representations that he would convey fee-simple title to the land in question. This agreement to convey the land so that upon payment of the purchase price the purchaser would have had the advantage of whatever speculative value the land might have and also the actual value, whatever it might be, was an essential part of the scheme to procure money from the intended victims. The appellant's main contention is not that the evidence is insufficient to show that the appellant procured the money by fraudulent representations alleged in the indictment, although it is contended that the evidence is insufficient to establish the fraudulent intent with which the promises were made, but is based upon the fact that certain allegations are made in the indictment concerning

the plan or scheme of the appellant to take care of the dissatisfied victims upon their ascertaining that they could not obtain the land which the appellant had agreed to convey to them. This scheme or plan, it was alleged, was that after the appellant had secured from his victims the partial or complete payments for the units, or acres, sold to them at the rate of $100 per acre he was to inform them that the oil prospects upon which they had been induced to purchase the land were not as bright as had been anticipated; that they were thereupon to be invited to join a new scheme wherein their interest in the original plan and scheme was to be exchanged for an interest in the new project which was called the "Ten-Way-To-Win-Syndicate"; that it was to be represented to these victims that this new scheme involved giving them an interest in each of ten different tracts of land widely separated in prospective oil territory, in each of which a well was to be drilled by a contractor who already promised to drill to a depth of 4,500 feet without requiring payments until that depth had been reached and without obligation on the part of the victim who was thus assured of ten chances to win in lieu of the bargain he had theretofore made. Proof was offered to support this allegation to the effect that immediately upon default upon the second installment of the option for the 30,000 acres which terminated the appellant's interest in a control over that acreage, this plan was at once broached. In the absence of an affirmative proof that this plan had been conceived prior to or

as a part of the original scheme of the sale of land in the 30,000 acre tract, the court granted defendant's motion to strike the evidence out, thus leaving the prosecution without any evidence to support these allegations in the indictment. While such evidence was clearly admissible to show that there was never any intent to complete the purchase of 30,000 acres, nevertheless, having been stricken out, it cannot be considered. It will be observed that at the time the "Ten-Way-To-Win-Syndicate" plan was advanced by the appellant, the fraud upon the victims had been fully perpetrated. In so far as it was a part of the original scheme it had no connection with the plan to defraud the proposed victim other than a method or means whereby the appellant secretly planned a device and method for his own protection against the obvious results of making such contracts of sale without any means of complying with them. While this plan of escape was alleged to be a part of the original plan, the question is whether upon a complete failure to prove this portion of the plan the verdict of the jury can be sustained. We see no difficulty in upholding the verdict of the jury, for the simple reason that the scheme to defraud found by the jury from the evidence was in essence and substance the scheme to defraud alleged in the indictment and the same scheme which was submitted to the grand jury. It was relatively immaterial, if not entirely inconsequential, what plans the appellant had devised for his escape from the predicament in which his fraud placed him. If it had been al-

leged in the indictment that it was a part of the plan to escape with the proceeds of his fraud to some foreign state it would at once be clear that such allegations were merely allegations of evidentiary matter tending to show consciousness of wrongdoing. The plan alleged in the indictment is of the same character and the proof thereof was not essential. It was essential that the scheme alleged should be proved in substance. That scheme was one to sell land by falsely pretending that the purchaser would be given title and that its potentialities for oil were being and would be developed by the appellant.

Cameron Bradley, a witness for the government, formerly employed by the appellant in connection with his plan to sell the land hereinbefore mentioned, testified at length concerning his relation to the sale and concerning appellant's conduct with relation thereto. On cross-examination appellant asked this witness where he lived. This was objected to by the district attorney and the court remarked, "I cannot see the materiality." Appellant's counsel stated, "Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have a right to elicit that on cross-examination. I may say that this is the first witness the Government has called that they have not elicited the address from." The Court: "I will sustain the objection." Again the witness was asked: "Do you live in Los Angeles?" To this the district attorney objected as immaterial. To the Court's statement that he had

already ruled on that question, appellant's counsel stated: "I would like, if the Court please, our exception noted to the Court's ruling made yesterday after the jury retired to the effect that we could not inquire as to the present address and residence of the witness." The jury was excused, whereupon the matter of the introduction of the cross-examination of the witness with relation to his residence was taken up and the attorney for the appellant stated: "I have been informed and caused to believe that this witness is now in the custody of the federal authorities. If that is so I have a right to show that for the purpose of showing whatever bias or prejudice he may have." The court sustained the objection to this question upon the theory that the witness could not be impeached by such evidence but only by evidence that he had been convicted of a felony. It is customary to allow cross-examination of a witness with reference to his place of residence. In some instances it is required that a witness must state his residence (Cal. Stats. 1851, p. 229, Sec. 162; P. C. Cal., Secs. 869, 882; People vs. Mitchell, 64 Cal. 85), and there would seem to be no good reason why this should not be done in all cases upon cross-examination. The purpose of such evidence is to identify the witness and to some extent give proper background for the interpretation of his testimony. In this case, however, the counsel indicated his purpose to use the information for the purpose of discrediting the witness. It is part of the obligation of a trial judge to protect witnesses against evi-

dence tending to discredit the witness unless such evidence is reasonably called for by exigencies of the case. A witness is not on trial and has no means of protecting himself. Here it was evident that the counsel for the appellant desired to discredit the witness, without so far as is shown, in any way connecting the expected answer with a matter on trial. If it had been contended that the witness was in custody because of his participation in the transaction with which the appellant was charged, and if it was sought to show that he was testifying under some promise of immunity, it would undoubtedly have been prejudicial error to have excluded such testimony, but counsel avowed no such purpose, and indicated that the proposed question was merely in pursuit of a fishing expedition by which he hoped to discredit the witness. The witness was examined at great length concerning his relation to the appellant and great latitude was accorded in that examination.

The indictment contains six counts based upon the mailing of six different letters. The trial court deeming that the evidence on the third and fourth counts was insufficient withdrew the consideration thereof from the jury. The letter set forth in the first count of the indictment was written May 18, 1927, to Bessie E. McCluggage, at 1184 No. Alexandria Avenue, Los Angeles, California. The addressee testified that she received this letter in an envelope which was also received in evidence, postmarked Los Angeles, through the mail. A witness who testified that she was the stenographer for Mr. Alford

at the time the letter was mailed, testified that she typed it and that she was positive that she placed it in the mail because she was the stenographer at the time the letter was mailed. She also testified to the same effect with relation to a letter set forth in the second count dated May 24, 1927, addressed to Charles E. Hood, 2601 Cherry, at Willow, Long Beach, California. This letter was signed by Mr. Alford and the stenographer testified that either she or Miss Green mailed all the letters that were written. On cross-examination she testified that she was working in the office of the appellant from February to July, 1927, that the letters in evidence were dictated in the usual way, taken down in shorthand, that she mailed all the letters that were written and there was no reason why she should not mail such letters although she admitted that she did not know it was mailed, but on redirect examination she again asserted that she was positive all these letters were mailed. It is apparent from the testimony of this witness that while she may not have had a distinct recollection in regard to the mailing of each particular letter that was dictated to her, she did have a knowledge of the custom of the mailing of the letters dictated to her and signed by the appellant and that she had followed the usual custom in this case. Mr. Hood, the addressee of the letter set out in the second count testified that he received the letter through the mail. The evidence with reference to the mailing of the letter was sufficient to justify the verdict of the jury.

As to instruction No. 10 referred to on page 72 of appellant's brief, the court did give substantially this instruction. The requested instruction states that the evidence must establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled, whereas the court properly instructed the jury that, if when the promise was made the defendant had no intention of performing, such promise was fraudulent.

The court also instructed the jury that if the defendant devised the scheme set forth in the indictment and made false and fraudulent representations for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, Oklahoma, etc., a subsequent ultimate intent to reimburse the investors by no means furnished a condonation or legal excuse for false representations, but such fact could be considered by the jury in determining whether there was an intent to defraud. Appellant complains of this instruction on the ground that it is not alleged in the indictment that the appellant misrepresented his title. This statement concerning the indictment is true, but the court elsewhere instructed over and over that it was necessary to prove the allegation of the indictment beyond a reasonable doubt in order to convict the appellant. The allegations in the indictment concerning title were quoted in the instruction. The jury were therefore properly instructed as to what proof was necessary to substantiate the charge in the indictment. The instruction with reference to

misrepresentation concerning title was for the purpose of informing the jury that an ultimate intent to repair the fraud would not excuse fraud. That this instruction incorrectly assumed that there was an affirmative charge of misrepresentation as to title, is, in the light of this fact, not significant.

With reference to counts 5 and 6, it is unnecessary to consider the evidence on these counts for the reason that the sentences thereon run concurrently with the sentence under counts 1 and 2 and are for a shorter period.

Judgment affirmed.

[Endorsed]: Opinion. Filed May 26, 1930. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

DISSENTING OPINION U. S. CIRCUIT COURT OF APPEALS.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

DIETRICH, Circuit Judge, Dissenting.—I had supposed it to be a universal rule that, within reasonable limits, a cross-examiner has the right to disclose by cross-examination the conditions under which a witness testifies and the environment from which he comes to the witness-stand in order to enable the jury more justly to weigh his testimony. Generally, in case of objection, counsel cannot be required to declare what he expects to prove (Buck-

staff vs. Russell, 151 U. S. 626) but particularly is this true of a cross-examination. Touching considerations affecting the credibility of the witness, the cross-examiner often cannot know in advance just what facts he will be able to uncover. Sometimes, as apparently was the case here, he may have intimation of a condition which in itself probably would be of little or no importance, but which with the surrounding circumstances when fully disclosed may very greatly affect the credibility of the witness and the weight of his testimony. To me, therefore, it seems to be beside the question to suggest, as stated in the majority opinion, that counsel "was merely in pursuit of a fishing expedition by which he hoped to discredit the witness." Much cross-examination is necessarily exploratory and the limitation thus implied would greatly impair the right.

The lower court apparently proceeded upon the erroneous theory that defendant was limited to proof that the witness had been convicted of a felony. That might have been true had defendant's sole object been the impeachment of the witness in point of general character; but an unimpeachable witness may give impeachable testimony. Though not color blind he may have looked through colored glasses. So, conceding the honesty of the witness here, it was competent to show that he testified under conditions by reason of which, consciously or unconsciously, his testimony was colored, and that he was subject to influences coercive in their tendency, or was so far subject to the power of the

government officers, including the district attorney, that he hoped to curry favor with them. His protection against needless humiliation would seem to be scarcely more than a pretext if he was in custody under conviction for a misdemeanor; presumably that was a fact already within the public knowledge. And if he was in custody for some other reason which we can only conjecture, before interrupting a natural and ordinary inquiry which defendant was seeking to make, the court should, in the absence of the jury, have required of the district attorney a disclosure of the conditions, which, in protection to the witness, he was contending should not be made public, to the end that an intelligent ruling might be made.

It comes with poor grace from the district attorney now to say that even if erroneous, the ruling was not prejudicial. If he did not fear the effect of the desired disclosures, why did he so promptly and persistently resist the offer to make them? To me it is a little less than amazing that objection was interposed to a simple inquiry as to where the witness lived.

I further think that the instructions given do not fully cover defendant's request No. 10; and that there was error in giving an instruction in which reference was made to "false and fraudulent representations and assurances for the purpose of deceiving persons with respect to defendant's ownership of the land," for the reason that, as given, this instruction advised the jury that they should convict defendant for a fraud touching which evidence

had been received but which was clearly beyond the scope of the charges laid in the indictment.

[Endorsed]: Dissenting Opinion. Filed May 26, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6028.

J. W. ALFORD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Decree. Filed and entered May 26, 1930. Paul P. O'Brien, Clerk.

At a stated term, to wit, the October Term, A. D. 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twenty-sixth day of June, in the year of our Lord one thousand nine hundred and thirty. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable CURTIS D. WILBUR, Circuit Judge.

[Title of Cause.]

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant, filed June 25, 1930, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. Leo Friedman, counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above

cause be, and hereby is stayed, to and including August 25, 1930.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated: San Francisco, California, July 8, 1930.

[WESTERN UNION TELEGRAM.]

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C 450

Leo R Friedman
Russ Bldg San Francisco Calif

No objections to order staying mandate for reasonable time in Alford case.

UNITED STATES ATTORNEY.

[Endorsed]: Filed Jul. 8, 1930. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing five hundred and eight (508) pages, numbered from and including 1 to and including 508, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of July, A. D. 1930.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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CHARLES ELMORE CR
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1930

No. 370

J. W. ALFORD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

THOMAS M. FOLEY,
Hearst Building, San Francisco,
Attorney for Petitioner.

LEO R. FRIEDMAN,
Russ Building, San Francisco,
Of Counsel.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

No.

J. W. ALFORD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of J. W. Alford for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit respectfully shows:

The petitioner, J. W. Alford, was indicted on January 3, 1929, by the Grand Jury of the United States in and for the Southern District of California, Central Division. Said indictment charged the defendant with six violations of Section 215 of the criminal code of the United States or, as it is more commonly called, with using the United States mails for the purpose of executing a scheme or artifice to defraud. The indictment is set forth at length from pages 3 to 15 of the transcript of record.

The indictment alleges but one scheme to defraud which scheme is incorporated in toto in each of the six counts. The alleged offenses consisted in mailing six separate letters in furtherance of this one specific scheme.

At the beginning of the trial Count No. 4 was dismissed on motion of the petitioner as being a repetition of Count No. 1 (Trans. pp. 27, 81). During the trial Count No. 3 was dismissed on motion of the United States Attorney (Trans. p. 190).

The petitioner pled not guilty to each of the counts of the indictment and seasonably moved the trial Court for an order directing the Government to furnish him with a bill of particulars, which motion and demand for said bill of particulars is set forth beginning with page 15 of the transcript of record. This motion was by the Court granted in part but otherwise denied by the trial Court. No ground of error is urged herein as to the refusal of the Court to grant any part of the demand and mention of the same is only made herein because the Government, in conforming to the order granting in part the bill of

particulars, limited the charge to certain items and dates (Trans. pp. 21 and 23; infra 29).

Upon such indictment and the bill of particulars as furnished by the Government the cause proceeded to trial before the Honorable William H. Sawtelle and the jury.

One of the main points relied upon by petitioner is that the state of the case and record as it was when the cause was submitted to the jury resulted in the defendant being tried and convicted in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

This point arose due to the fact that the indictment specifies the scheme to defraud to have consisted of twelve major and essential elements. The Court excluded testimony relative to several of these major elements and no evidence proving or tending to prove them was introduced in the case at all. When the cause was submitted to the jury they were authorized to determine the guilt or innocence of defendant upon a scheme or plan to defraud different than that as found and charged by the Grand Jury. This point was raised on the motion for a directed verdict made at the conclusion of the Government's case in chief (Trans. p. 251) and on a similar motion made at the close of all the testimony (Trans. p. 376). It was likewise urged in appellant's motion for a new trial (Trans. p. 403).

During the trial the Government produced as one of its chief witnesses a man named Cameron Bradley, whose testimony, if true, was most damaging to petitioner (Trans. pp. 176-209). On cross-examination

petitioner sought to elicit from this witness his then address and place of residence (Trans. p. 194). The Court sustained objections to this line of inquiry. Petitioner further maintained that he was informed the witness was then in the custody of the Federal authorities and that he had a right to question him upon this in order to show his bias or prejudice (Trans. 198). The trial Court refused to permit such cross-examination on the objections of the Government. The Circuit Court of Appeals, in its majority opinion, holds that these rulings of the trial Court were correct, which holding is in direct conflict with prior decisions of the Supreme Court and of the Circuit Court of Appeals from other than the Ninth Circuit.

The trial Court refused to give an instruction, requested by petitioner, pertinent and necessary to his defense (Requested Instruction 10; Trans. p. 401). The refusal to give this instruction was upheld by the Circuit Court of Appeals, in its majority opinion, which holding is in direct conflict with prior decisions of this Court and of Circuit Courts of Appeal from other than the Ninth Circuit.

The trial Court instructed the jury in such manner as to authorize the jurymen to return a verdict of guilty upon proof of representations made by petitioner and which were not a part of the alleged fraudulent scheme as set forth in the indictment (Trans. p. 401). Contrary to prior decisions of Circuit Courts of Appeal from other than the Ninth Circuit the giving of such an instruction was upheld by the Appellate Court.

The jury found the petitioner guilty as charged in Counts I, II, V and VI of the indictment (Trans. p. 68). Petitioner moved the Court for a new trial which motion was denied (Trans. p. 403). Thereafter petitioner moved in arrest of judgment which motion was denied (Trans. p. 404).

Thereupon the Court made its judgment and sentenced petitioner on the first count of the indictment to imprisonment in the United States Penitentiary for a period of five years and a fine of one thousand dollars. On the second count appellant was sentenced to two years' imprisonment in the same penitentiary and a fine of one thousand dollars. On the fifth and sixth counts appellant was sentenced to imprisonment in the same penitentiary for two years on each of said counts—all sentences of imprisonment to run concurrently (Trans. p. 406).

Petitioner thereafter duly brought and perfected his appeal to the United States Circuit Court of Appeals for the Ninth Circuit. The convictions of judgments appealed from were affirmed, by a divided Court on May 26, 1930. The majority opinion was written by Mr. Justice Wilbur and concurred in by Mr. Justice Rudkin (Trans. pp. 492-503). Mr. Justice Dietrich filed a dissenting opinion (Trans. pp. 503-506).

Thereafter a petition for a rehearing was filed and denied by said United States Circuit Court of Appeals (Trans. p. 507).

Your petitioner, believing that the guaranties of the Fifth Amendment to the Constitution of the

United States have been denied him and that its provisions have been infringed and that the majority opinion of the Circuit Court of Appeals for the Ninth Circuit is in direct conflict with prior decisions of this, the Supreme Court and Circuit Courts of Appeal from other Circuits and that such matters, so upheld by the majority opinion, were vital questions going to the rights and bearing upon the guilt or innocence of petitioner, now comes to this high Court seeking a writ of certiorari to the end that justice be done in the premises.

SUMMARY OF GROUNDS RELIED ON FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

It is petitioner's contention:

First, that he was denied the benefits and convicted in violation of the provisions of the Fifth Amendment to the Constitution of the United States in that the action of the lower Court in permitting the cause to go to the jury without proof of certain essential elements of the indictment was in effect an amendment of the indictment. That the majority opinion of the Circuit Court of Appeals upholding such action of the trial Court is contrary to prior decisions of the Supreme Court of the United States and of many other Circuit Courts of Appeal, such as the cases of *Ex parte Bain*, 121 U. S. 1, 30 L. Ed. 849; *Naftzger v. U. S.*, 200 Fed. 494 (C. C. A. 8).

Second, that the majority opinion of the Circuit Court of Appeals relative to the right of petitioner to cross-examine the witness Cameron Bradley is in

direct conflict with prior decisions of the Supreme Court of the United States and of prior decisions rendered by the United States Circuit Courts of Appeal of other circuits, such as the decisions rendered in:

Tla-Koo-Yel-Yee v. U. S., 167 U. S. 274;
The Ottowa v. Stewart, 20 U. S. 165;
Furlong v. U. S., 10 Fed. (2nd) 492 (C. C. A. 8);
Farkas v. U. S., 2 Fed. (20) 644 (C. C. A. 6).

Third, that the majority opinion of the Circuit Court of Appeals in so far as it deals with the refusal of the trial Court to give defendant's requested Instruction No. 10 is in direct conflict with prior decisions on the same point of the Supreme Court of the United States and of Circuit Courts of Appeal of other circuits, such as the cases of:

Byrd v. U. S., 180 U. S. 356;
Calderon v. U. S., 279 Fed. 556 (C. C. C. 5);
Hendry v. U. S., 233 Fed. 5 (C. C. A. 6);
Carney v. U. S., 282 Fed. 398 (C. C. A. 8).

Fourth, that each of the matters passed upon in the majority opinion of the Circuit Court of Appeals is an important question of general law and decided in a way untenable and in conflict with the weight of authority.

Fifth, that the majority opinion of the Circuit Court of Appeals relative to the instructions as given by the trial Court to the jury is in conflict with the weight of authority.

Sixth, that the dissenting opinion of Mr. Justice Dietrich correctly states the law as found in the prior decisions of this Court and Circuit Courts of Appeal.

For the reasons herein stated petitioner respectfully prays that this Honorable Court issue a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to the end that the questions involved may be fully presented and argued and justice done in the premises.

Dated, San Francisco,
August 11, 1930.

Respectfully submitted,
THOMAS M. FOLEY,
Attorney for Petitioner.

LEO R. FRIEDMAN,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for petitioner in the above entitled cause and that, in my judgment, the foregoing petition for a writ of certiorari is well founded in point of law as well as in fact and that said petition is not interposed for delay.

Dated, San Francisco,
August 11, 1930.

THOMAS M. FOLEY,
Attorney for Petitioner.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1930

No.

J. W. ALFORD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

---

1. **PETITIONER WAS CONVICTED IN VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND THE MAJORITY OPINION OF THE CIRCUIT COURT OF APPEALS HEREIN IS IN DIRECT CONFLICT WITH PRIOR DECISIONS FROM OTHER CIRCUITS AND OF THE SUPREME COURT.**

Petitioner contends that, in the United States Courts, a defendant can only be convicted upon the charge contained in the indictment as found by the Grand Jury. No judge or prosecuting officer has

the power to usurp the functions of a Grand Jury or alter, add to or strike from an indictment any material part thereof, either directly or indirectly.

It rests exclusively with the Grand Jury to say for what offense a man be tried and when the Grand Jury has spoken, by the return of an indictment, the man must be convicted, if at all, upon proof of the elements of the offense as the Grand Jury found them.

In the case at bar the grand jury designated, by its indictment, an alleged scheme to defraud consisting of twelve major elements. When the taking of testimony in the case was closed it developed that several of these major and essential elements were unsupported by any evidence at all.

The trial Court and the Circuit Court of Appeals for the Ninth Circuit saw fit to substitute their judgment for that of the Grand Jury and to cull out of the indictment certain allegations as to which there was some evidence, and uphold the conviction upon the theory that such allegations were sufficient to establish a scheme to defraud. But as petitioner was thus convicted upon a scheme different from and consisting of considerably less elements than the scheme as found by the grand jury, he was convicted of an offense with which the grand jury had never charged him and thus convicted contrary to the provisions of the Fifth Amendment to the Constitution.

In order to clearly point out these matters we set forth *in haec verba* the alleged scheme to defraud as found in Count One of the indictment which scheme was by reference incorporated in each of the subsequent counts. We print in italics those portions of

this alleged scheme as to which there was no evidence proving or tending to prove the same.

"The grand jurors for the United States of America, impaneled and sworn in the Southern Division of the Southern District of California and inquiring for the Southern District of California, upon their oath present: That J. W. Alford, hereinafter called the defendant, whose full and true name, other than as herein stated, is to the grand jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: prior to the several acts of mailing of letters hereinafter alleged, did devise a scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises, from Bessie E. McCluggage, G. R. McNeil, Edith E. Skoog, John R. Gordon, Charles E. Hood and Madolin B. Hoch, and from other persons too numerous to mention, including the public generally, all of said persons being hereinafter referred to in this indictment as the persons to be defrauded:

It was a part of said scheme and artifice that the defendant should and he did engage in business in Los Angeles, California, and in other places in the United States under the fictitious firm name and style of J. W. Alford & Company.

It was further a part of said scheme and artifice that the defendant should and on the 17th day of January, 1927, he did obtain an option to purchase approximately fifty-four sections of land in townships three and four, range three east, in Cimarron County, Oklahoma, which said option provided that the defendant would obtain title to the first sixteen hundred eighty acres of

said land upon the payment of $25,200.00 within thirty-one days from the execution of said option; the option further provided that the defendant could obtain title to the remaining acreage described in said option upon the payment in addition to the said $25,200.00 of an additional $282,000.00.

It was further a part of said scheme and artifice that the defendant would not exercise the option to purchase any of the land hereinbefore described nor to obtain title to any part thereof.

It was further a part of said scheme and artifice that the defendant should and he did, without having title thereto, sell and offer for sale parcels and tracts of land from and out of the tract of land hereinbefore described and to which he had an option as aforesaid.

It was further a part of said scheme and artifice that he should and did pretend and represent to the persons to be defrauded that should the persons to be defrauded pay for the parcels and tracts of land included in the tract hereinbefore described and to which the defendant had an option as aforesaid, that he, the said defendant, would deliver to the persons to be defrauded a grant deed giving them fee title to the land paid for by them as aforesaid, when in truth and in fact the defendant did not intend to and did not in any instance deliver a deed to any of the persons to be defrauded who had paid the said defendant moneys in exchange for parcels and tracts of land included in the tract hereinbefore described and to which the defendant held an option as aforesaid.

It was further a part of said scheme and artifice that the defendant should and did pretend

and represent to the persons to be defrauded that the parcels and tracts purchased by the persons to be defrauded from the said defendant as aforesaid was potential oil land and was land suitable for agricultural purposes.

It was further a part of said scheme and artifice that the defendant should and did pretend and represent to the persons to be defrauded that he, the said defendant, would spend $300,000.00 in drilling oil wells on the tract of land upon which the defendant had an option and from which he was selling tracts and parcels of land to the persons to be defrauded as aforesaid, when in truth and in fact the defendant did not nor did he intend to spend $300,000.00 in drilling oil wells on said tract of land or any other sum nor did he intend to drill an oil well or oil wells on said tract of land.

It was further a part of said scheme and artifice that the defendant should and he did represent to the persons to be defrauded after they had purchased the parcels and tracts of land from the defendant as aforesaid that the prospect for discovering oil in the vicinity of and on the land so purchased by the persons to be defrauded from the said defendant was not what the defendant had expected it to be at the time that he sold parcels and tracts of land to the persons to be defrauded.

It was further a part of said scheme and artifice that the defendant should and he did represent to the persons to be defrauded after they had purchased the parcels and tracts of land from the defendant aforesaid that he, the said defendant, had organized a 'Ten Way To Win Syndicate' for the purpose of protecting the persons to be

defrauded and that he, the said defendant, would give the persons to be defrauded who had purchased tracts and parcels of land from the said defendant as aforesaid interests in the said 'Ten Way To Win Syndicate' in an amount equal to the amount that the persons to be defrauded had invested in the tracts and parcels of land purchased from the said defendant as aforesaid.

It was further a part of said scheme and artifice that the defendant should represent to the persons to be defrauded who had purchased the tracts and parcels of land as aforesaid from the defendant that the 'Ten Way To Win Syndicate' would own ten one thousand acre tracts of land widely separated from each other; that in the center of each tract an oil well would be drilled; that the expense of drilling said wells would be met by selling acreage offsetting the wells to be drilled by the defendant for the 'Ten Way To Win Syndicate' as aforesaid; that the said defendant had secured drillers to drill the said oil wells for the 'Ten Way To Win Syndicate' who had promised not to demand any compensation for their services until the said wells had been drilled to a depth of 1500 feet.

It was further a part of said scheme and artifice that the defendant should not and he did not, nor did he intend to secure any leases of any land for any purpose for the said 'Ten Way To Win Syndicate.'

It was further a part of said scheme and artifice, and in furtherance thereof, that the defendants would unlawfully, fraudulently and knowingly make false pretenses, representations and promises to the said persons to be defrauded, through and by means of divers printed circu-

lars, newspapers, magazines, advertisements, letters and publications in substance and effect as follows:

1. That should the persons to be defrauded purchase a tract or parcel of land from the said defendant in the tract of land hereinbefore described located in Cimarron County, Oklahoma, and should the persons to be defrauded pay the purchase price of said parcel or tract of land so purchased by them that he, the said defendant, would deliver to the said persons to be defrauded a grant deed to said parcels or tracts of land, when in truth and in fact and as the defendant then and there well knew, he would not and could not deliver a grant deed to transfer title to any of the persons to be defrauded or to anyone to any of the land sold by him to the persons to be defrauded.

2. That he, the said defendant, was spending the sum of $300,000.00 in drilling oil wells on the tract of land which the persons to be defrauded had purchased from the defendant located in Cimarron County, Oklahoma, when in truth and in fact and as the defendant then and there well knew, the defendant was not spending nor did he spend the sum of $300,000.00 or any other sum in drilling oil wells on the tract of land aforesaid or any other sum of money nor did he drill or commence to drill any oil wells on said tract of land.

3. That should the persons to be defrauded exchange the land purchased by them from the defendant in Cimarron County, Oklahoma, for interests in an association organized by the defendant and known as the 'Ten Way To Win Syndicate' that they, the persons to be defrauded, would be making a profitable investment, then in

truth and in fact and as the defendant then and there well knew, the persons to be defrauded would not be making a profitable investment.

5. That the defendant would purchase for the 'Ten Way To Win Syndicate' oil leases on ten one thousand acre tracts widely separated from each other, when in truth and in fact and as the defendant then and there well knew, the defendant did not intend to nor did he purchase any tracts of land for any purpose for the 'Ten Way To Win Syndicate.'

6. That the expenses of drilling the wells on the leases to be acquired by the 'Ten Way To Win Syndicate' could be obtained by selling offset acreage to the well to be drilled by the 'Ten Way To Win Syndicate,' when in truth and in fact and as the defendant then and there well knew, the defendant did not intend to nor did he sell any offset or other acreage to drill any oil wells for the 'Ten Way To Win Syndicate' or for any other purpose or at all.

That by means of the aforesaid scheme and artifice to defraud and to obtain money and property from the persons to be defrauded by means of the aforesaid false representations, pretenses and promises the defendant intended to, and did, obtain large sums of money from the persons to be defrauded and intended to and did appropriate and convert to his own use and benefit a large part of the said sums of money, the exact amounts being to the grand jurors unknown." (Here follows allegations as to the mailing of the letters.)

Prior to the trial of the cause the petitioner made a motion for a bill of particulars asking information on

twenty-four separate and distinct grounds (Trans. pp. 15-19). The first and second demand were as follows:

> "1. What said alleged scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises consisted of in its entirety.
>
> "2. What were the false or fraudulent pretenses, representations or promises used by or intended to be used by defendant in said scheme and artifice to obtain money and property" (Trans. p. 16).

The eighteenth demand was as follows:

> "18. When the defendant devised the scheme or artifice set forth in each or all of the counts of the indictment herein" (Trans. p. 18).

The trial Court denied demands one and two and allowed the same as to demand number eighteen. In doing so the Court made the following order:

> "This cause coming before the Court for hearing on the motion of defendant J. W. Alford for a Bill of Particulars; Donald Armstrong, Assistant United States Attorney, appearing as counsel for the plaintiff, and H. H. Harris, Esq., appearing as counsel for the defendant, the motion of defendant J. W. Alford for Bill of Particulars is presented, and the said Donald Armstrong, Esq., having thereupon stated that there are no matters other than the facts and things described in the indictment which he will seek to prove in establishing the charge, either as to the character of the fraudulent scheme, as alleged, or any false representations or pretenses connected therewith; the motion, therefore, is denied as to specifications 1 and 2; specification 6 is denied;

> specifications 10 and 11 are allowed; specification 18 is allowed; specification 19 is denied. Specifications 20, 21 and 23 are allowed, the United States Attorney stating he will furnish same. Specification 24 is denied. No other specifications, set forth in the motion, were presented by the defendant" (Trans. p. 21).

The Government in complying with the Court's order and in answer to demand No. 18 supplied appellant with a bill of particulars which read in part as follows:

> "Defendant devised the scheme and artifice set forth in each count of the indictment on or about October 1, 1927, provided he did not enter into negotiations with Guy W. Slack for the purchase of the land described in the indictment on or before that date" (Trans. p. 23).

The indictment as amplified by the proceedings on motion for a bill of particulars and the bill of particulars furnished by the Government alleges that the various letters set forth in the indictment were mailed in furtherance of and for the purpose of executing the alleged scheme and artifice *as such scheme and artifice was found by the Grand Jury and by it set forth in the indictment.* The Grand Jury having designated the particular elements going to make up the alleged scheme to defraud has set forth as a constituent and necessary part of said scheme those matters relating to the "Ten Way to Win Syndicate" and the fact that defendant would not exercise the option to purchase the land in Cimarron County, Oklahoma, nor obtain title to any part thereof.

These matters having been set forth as substantial parts of the scheme to defraud cannot be disregarded either by the trial Court or by the jury and that the failure to prove such matters constitutes a failure to prove the scheme as charged in the indictment. It must first be remembered that Section 215 of the Criminal Code (18 U. S. C. A. p. 134, sec. 338) does not define what acts shall constitute any scheme or artifice to defraud or for obtaining money or property by false pretenses. Neither is there any other provision in the laws of the United States defining what acts shall constitute such a scheme. *It is thus left to the Grand Jury to determine what acts do or do not constitute such a scheme or artifice and the opinion and judgment of the Grand Jury in this behalf cannot be overridden, altered or varied from by any Court or prosecuting officer.*

In *United States v. Hess*, 124 U. S. 483; 31 L. Ed. 516, the indictment, which was for a violation of Section 215 of the Criminal Code then known as 5480 of the Revised Statutes, merely alleged that the defendant had devised a scheme to defraud without setting forth the particulars of such scheme. In holding such pleading insufficient the Supreme Court said:

> "The object of the indictment is: first, to furnish the accused with such a description of the charge against him as will enable him to make his defense. * * * and second, to inform the Court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent, and these

must be set forth in the indictment with reasonable particularity of time, place and circumstances" (124 U. S. 487; 31 L. Ed. 518).

The Supreme Court then, in the last paragraph of its opinion, holds that the particulars of the scheme are matters of substance:

"Such particulars are matters of substance and not of form, and their omission is not aided or cured by the verdict" (124 U. S. 489; 31 L. Ed. 518).

The rule that the particulars of the scheme are matters of substance has also been announced by the Circuit Court of Appeals for the Eighth Circuit, supported by ample authority as follows:

"Nevertheless, the particulars of the scheme are matters of substance, and must be set out with sufficient certainty to show its existence and character, and to fairly acquaint the accused with what he is required to meet. United States v. Hess, 124 U. S. 483, 8 Sup. Ct. 571, 31 L. Ed. 516; Stokes v. United States, 157 U. S. 187, 15 Sup. Ct. 617, 39 L. Ed. 667; Stewart v. United States, 55 C. C. A. 641, 119 Fed. 89, 94; Miller v. United States, 133 Fed. 337, 66 C. C. A. 399."

Brooks v. United States, 146 Fed. 223, 227 (C. C. A. 8).

If the particulars of the scheme as set forth by the Grand Jury constitute matters of substance then they are vital to the charge and proof thereof is necessary.

The rule, in cases involving a violation of Section 215 of the Criminal Code, is that the scheme as alleged in the indictment must be proved before a

conviction for mailing a letter in furtherance thereof can be sustained:

> "The purpose of requiring a description of the scheme to defraud in the indictment is to definitely and clearly inform the accused of the scheme charged against him so as to enable him to make his defense. Brooks v. United States (C. C. A.) 146 Fed. 223, decided at this term, and not yet officially reported; Stewart v. United States, 55 C. C. A. 641, 119 Fed. 89, 94; United States v. Hess, 124 U. S. 483, 486, 8 Sup. Ct. 571, 31 L. Ed. 516.
>
> "It follows that one must be convicted, if at all on the scheme as alleged, and if the scheme as alleged is not substantially established by the proof he cannot be convicted."
>
> *Brown v. United States*, 146 Fed. 219, 220 (C. C. A. 8).

Each paragraph of the indictment which we have printed in italics above commences with the phrase, "It was further a part of said scheme and artifice," thus putting at rest any question of whether the Grand Jury intended these particular paragraphs to be construed as a means merely of carrying into effect any scheme or artifice devised by appellant or whether they intended the matter set forth in these paragraphs to be construed as indispensable parts of the scheme or artifice itself. Clearly, the Grand Jury set forth these particular facts as constituting essential and component parts of the scheme and thus required the Government to establish these allegations by competent proof. The Grand Jury does not allege that these allegations were as to matters done or to be

done by defendant in furtherance of some scheme set forth in the indictment but specifically states that these allegations were a part of the scheme itself.

As there is not one word of testimony anywhere in the record relative to any "Ten Way to Win Syndicate" or as to any statements or representations made or to be made by petitioner relative thereto or any literature containing any reference thereto it follows that there is a total failure to prove the scheme as found by the Grand Jury and specifically set forth in the indictment.

This brings us to a discussion of how far the allegations of an indictment are binding upon the trial Court and the prosecution and as to what portions of an indictment can be rejected and a conviction on the remaining part sustained.

The lower Court and the prosecution were evidently of the opinion that where an indictment alleges a scheme to defraud composed of several elements, which a Grand Jury has solemnly incorporated therein, certain of these elements can be rejected and disregarded, but such is not the law. Nothing can be disregarded which is set forth in an indictment except those matters therein which constitute surplusage. If it be surplusage proof thereof is not necessary. If it be not surplusage the allegation becomes material to the charge and must be proven.

As to what constitutes surplusage the rule, which has been invariably followed, is laid down in the case of *U. S. v. Sauer*, 26 Fed. Cases 388, case No. 15403, where Mr. Justice Story in delivering the opinion of

"There are, however, some principles which will guide us in arriving at a correct conclusion, and as these principles will be found to be well laid down by Mr. Russell in his work on Crimes and Misdemeanors, with illustrative examples, I shall state them from this work, because I find them confirmed by the authorities cited by him. 'Two questions generally arise. The first is, What allegations must be proven and what may be disregarded in evidence? The second is, What is sufficient proof of allegations which cannot be disregarded in evidence? The former includes the consideration of what constitutes mere surplusage in an indictment; the latter what properly constitutes variance. Mere surplusage will not vitiate an indictment and need not be established in proof. *The material parts which constitute the offense charged must be stated in the indictment, and they must be proved in evidence.* Allegations not essential to such a purpose, which might be entirely omitted without affecting the charge against the defendant and without detriment to the indictment, are considered as mere surplusage and may be disregarded in evidence. *But no allegation, whether it be necessary or unnecessary, whether it be more or less particular, which is descriptive of the identity of that which is legally essential to the charge in the indictment can ever be rejected as surplusage.*'"

Applying the rule laid down in the foregoing case we find that the Grand Jury has set forth specifically what they consider to be the necessary elements of this charge. Appellant was not being tried on what the United States Attorney thought the charge consisted of nor on what the trial Court believed was

sufficient to justify the infliction of some punishment upon him. He was being tried under the Fifth Amendment of the Constitution of the United States, that is, upon an indictment which contained what the Grand Jury determined the elements of the offense to be. The Grand Jury has said that the allegations relating to the "Ten Way to Win Syndicate" were a vital, necessary part of the scheme. These are allegations descriptive of the identity of the offense—an offense the elements of which can only be determined by the Grand Jury and for which we cannot resort to any law or statute of the United States. The Grand Jury having seen fit to denominate these allegations as essential elements of the scheme they do not constitute surplusage; they cannot be rejected and they must be proven by the Government. They are "descriptive of the identity of that which is legally essential to the charge" (*U. S. v. Sauer*, supra) because without the statement of the particular facts constituting the alleged scheme no offense can be stated (*U. S. v. Hess*, 124 U. S. 483; 31 L. Ed. 516, 517).

The question to be determined in all these matters is not whether the lower Court or prosecuting officer believes that some person has committed a crime and would have been indicted whether certain facts were or were not presented to the Grand Jury but what are the material facts which the Grand Jury considered essential to the indictment of such person. As our Supreme Court has said, in all probability the Grand Jury may never have returned this indictment or may have refused to indict if the evidence of the

"Ten Way to Win Syndicate" matters had not been presented to it.

In the late case of *Naftzger v. U. S.*, 200 Fed. 494, (C. C. A. 8), the defendant was charged with the offense of buying stamps that had been stolen from the Government. The indictment alleged that the stamps which were bought by the defendant were stolen from certain post offices in the State of Kansas. The proof did not show the stamps to have been stolen from post offices in the State of Kansas. The defendant was convicted and the matter taken to the Circuit Court of Appeals. In reversing the conviction the Circuit Court of Appeals said:

> "Counsel for the government contend that the recital of the indictment that the stamps were stolen from 'certain post offices in the state of Kansas' is surplusage, and need not be proven, and that it sufficed if made to appear that they were stolen elsewhere from the government. We are of the opinion that, if the allegation had omitted the words quoted, it would have been sufficient; but having been allowed, *the evidence must conform to and support the allegation.* The return of an indictment is the work of the grand jury only—a co-ordinate branch of the court. *It is for that body, and for no other officer, to say what shall and what shall not be charged*, because the fifth amendment to the constitution declares that: 'No person shall be held to answer * * * for an infamous crime, unless on a presentment or indictment of a grand jury.'
>
> "In effect the government now insists on amending the indictment by striking out the words 'from various post offices in the state of Kansas.' That was what was in fact done in

> the case of ex parte Bain, 121 U. S. 1, 7 Sup. Ct. 781, 30 L. Ed. 849, a case against a national bank officer for falsifying the books with intent to deceive the United States, depositors, and others, 'and the Comptroller of the Currency.' The words 'Comptroller of the Currency' need not have been alleged. Those words on motion of the United States attorney were stricken out by the court as surplusage. After conviction the Supreme Court, in habeas corpus proceedings, held the judgment to be void. It was conceded that there was no necessity to allege that the Comptroller was deceived, as we concede that it would be a crime to knowingly receive stolen stamps from whersoever stolen from the government."
>
> *Naftzger v. U. S.*, 200 Fed. 494, 496 (C. C. A. 8).

The Court then goes on to state that it being alleged in the indictment that the stamps were stolen in the State of Kansas such fact could not be disregarded and had to be proved even though the indictment would still have charged an offense and been good had such allegation been omitted.

In the case of *Ex parte Bain*, 121 U. S. 1, 30 L. Ed. 849, the Supreme Court of the United States has laid down in unmistakable terms the lack of power of a trial judge or any other person or body to disregard any material matters included in the indictment by a Grand Jury. In the case of *Ex parte Bain* the defendant was charged by an indictment with doing certain things as a bank officer for the purpose of defrauding certain people and the Comptroller of the Currency. The trial Court did not deem it necessary for the Government to prove that these things

were done for the purpose of defrauding the Comptroller of the Currency and permitted the indictment to be amended by striking out these words. In dealing with the right of a trial judge to substitute its judgment for that of a Grand Jury the Supreme Court said (emphasis ours):

> "The learned judge who presided in the circuit court, at the time the change was made in this indictment, says that the court allowed the words 'Comptroller of the Currency and' to be stricken out as surplusage, and required the defendant to plead to the indictment as it then read. The opinion which he rendered on the motion in arrest of judgment, referring to this branch of the case, rests on the validity of the court's action in permitting the change in the indictment, upon the ground that the words stricken out were surplusage, and were not at all material to it, and that no injury was done to the prisoner by allowing such change to be made. He goes on to argue that the grand jury would have found the indictment without this language. But it is not for the court to say whether they would or not. *The party can only be tried upon the indictment as found by such grand jury, and especially upon all its language found in the charging part of that instrument.* While it may seem to the court, with its better instructed mind in regard to what the statute requires to be found as to the intent to deceive, that it was neither necessary nor reasonable that the grand jury should attach importance to the fact that it was the Comptroller who was to be deceived, yet it is not impossible nor very improbable that the grand jury looked mainly to that officer as the party whom the prisoner intended to deceive by a report which

was made upon his requisition and returned directly to him. As we have already seen, the statute requires these reports to be made to the Comptroller at least five times a year, and the averment of the indictment is that this report was made and returned to that officer in response to his requisition for it. How can the court say that there may not have been more than one of the jurors who found this indictment who was satisfied that the false report was made to deceive the Comptroller, but was not convinced that it was made to deceive anybody else? And how can it be said that with these words stricken out, it is the indictment which was found by the grand jury? *If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says 'no person shall be held to answer,' may be frittered away until its value is almost destroyed."*

Ex parte Bain, 121 U. S. 1, 9; 30 L. Ed. 849-852.

Thus, in the case at bar, how could the lower Court or any one else say that there may not have been more than one of the Grand Jurors who found the indictment who was satisfied that the matters relating to the "Ten Way to Win Syndicate" were the only things which constituted the scheme a fraudulent one? And how can it be said that if the matters relating to the "Ten Way to Win Syndicate" had not been

presented to the Grand Jurors they would still have found and presented this indictment? It is entirely probable that if the matter relative to the "Ten Way to Win Syndicate" had not been presented to the Grand Jury it would have refused to indict or found that the remaining matters did not constitute a fraudulent scheme.

It is rather remarkable, in view of the ultimate disposition made of this case, that the trial judge construed the allegations as to the "Ten Way to Win Syndicate" as being integral parts of the alleged scheme to defraud. This is evident from the following facts:

The Government called a witness named Brubaker who testified on his direct examination to a conversation he had with petitioner on May 23, 1927, relative to the so-called "Ten Way to Win Syndicate" (Trans. 130). Subsequently petitioner moved the Court to strike out all of this testimony as to the "Ten Way to Win Syndicate" on the ground that there was no evidence connecting it back to January 17, 1927, when the alleged scheme is charged to have been formulated. The Court struck out this testimony and in doing so construed the indictment in identically the same manner as petitioner has herein. This is manifested by the language of the trial Court in striking out the testimony which language is as follows:

> "That testimony (of the 'Ten Way to Win Syndicate') may possibly be admissible as tending to show the means by which the alleged original scheme was carried out, *but the indictment alleges that it was a part of the alleged*

original scheme, while the testimony in my judgment, does not so show" (emphasis ours; Trans. 148).

It therefore follows that defendant was not convicted upon an indictment as found by the Grand Jury but was convicted for formulating a scheme and mailing a letter in furtherance thereof entirely different from the scheme as found by the Grand Jury.

The language of the Circuit Court of Appeals in affirming the conviction is directly contrary to the prior decisions of this Court and of the Circuit Courts of Appeal from other circuits as we have set forth such decisions hereinabove.

The Circuit Court of Appeals entirely lost sight of what the scheme to defraud as found by the Grand Jury consisted and in furtherance of which the letters were alleged to have been mailed. The Grand Jury did not charge that the letters were mailed in furtherance of a scheme formulated by Alford to procure an option on the land in Oklahoma and sell it without exercising the option. The Grand Jury has specifically charged that these letters were mailed in furtherance of a scheme the essential elements of which were that appellant should procure these options, sell land thereunder and then, for the purpose of defrauding his purchasers, attempt to transfer them into a new project denominated the "Ten Way to Win Syndicate." It was in furtherance of a scheme to transfer the purchasers of land into the "Ten Way to Win Syndicate" that the letters are alleged to have been mailed and not merely for the purpose of having

the purchasers buy land for which Alford never intended to give them a deed.

That such was the scheme as found and charged by the Grand Jury is apparent from a reading of the indictment and conclusively established by the fact that each of the letters set forth in the various counts thereof were written and dated no earlier than May 18, 1927, after the expiration of the option, after the cessation of sales by Alford, and addressed to people who had already agreed to purchase and partially paid for some of the land.

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2. **PETITIONER WAS PREJUDICED BY THE CURTAILMENT OF THE CROSS-EXAMINATION OF THE WITNESS BRADLEY AND THE MAJORITY OPINION THEREON IS IN DIRECT CONFLICT WITH PRIOR DECISIONS OF CIRCUIT COURTS FROM OTHER DISTRICTS AND FROM THE SUPREME COURT AND IS AGAINST THE WEIGHT OF AUTHORITY.**

One Cameron Bradley was produced as a witness on the part of the Government. His testimony covers 38 pages of the record and will be found in the Transcript from pages 176 to 209 and from 373 to 375. His testimony was of a most damaging character to the appellant. He identified documents and testified to statements alleged to have been made by petitioner, which petitioner denied ever having seen or made. He testified to many other things the prejudicial character of which can be ascertained by a cursory inspection of his testimony.

On cross-examination petitioner sought to ascertain the then address of this witness and whether he then

lived in Los Angeles (Trans. p. 194). The Court sustained objections to this inquiry. Petitioner maintained his right to elicit the address and business of the witness and to disclose to the jury just who the witness was (Trans. p. 194). Petitioner further maintained that he was informed the witness was then in the custody of the Federal authorities and had a right to question him upon this in order to show his bias or prejudice (Trans. p. 198). The Court refused to permit such cross-examination on the objections of the Government.

This ruling of the Court was most prejudicial to petitioner. The credibility of the witness was a matter to be passed upon by the jury. Whether he was in custody and his testimony influenced thereby was a matter the jury had a right to consider and the petitioner to elicit on cross-examination. Such fact alone may have warranted and justified the jury in disbelieving his testimony. What his then address was and whether he lived in Los Angeles became important for two reasons: first, that the place he was living in or at may have thrown some light on his character or might have developed that he was living with some one of the Government's witnesses or some one connected with the prosecution; second, that his place of residence may have enabled petitioner to produce witnesses as to his bad reputation for truth, honesty and integrity and depriving appellant of this information deprived him of this right.

A common way to impeach a witness is to show that his reputation, in the community in which he lives, for truth, honesty or integrity is bad and such is the law of California:

> "A witness may be impeached by the party against whom he was called * * * by evidence that his general reputation for truth, honesty or integrity is bad. * * *"
>
> *Cal. Code Civil Procedure*, sec. 2051.

But how can one so impeach an adverse witness if the right and opportunity to ascertain where he lives is denied him?

Circuit Judge Dietrich, in his dissenting opinion (Trans. p. 503) has fully and accurately summarized the law on this point and agreed with petitioner's contention. The rules announced by him are in accord with the authorities from practically every jurisdiction within the United States as we will now demonstrate.

The Circuit Court of Appeals in the majority opinion decided this point against petitioner's contention upon grounds each of which are against the weight of authority in this country. These grounds are as follows:

1. That collateral information cannot be elicited on cross-examination for the purpose of discrediting a witness.

2. That a witness is entitled to be protected on cross-examination from evidence tending to discredit him.

3. That a witness is not on trial.

4. That appellant failed to avow that Bradley was testifying under some promise of immunity.

5. That the proposed question was merely in pursuit of a fishing expedition by which appellant hoped to discredit the witness.

A review of all the authorities in this country discloses that the foregoing reasons are erroneous. While it is true a witness is not on trial in the sense that any judgment can be rendered for or against him in the action, it is likewise true that a witness is on trial so far as his character, reputation, integrity, credibility, powers of observation and ability to relate are concerned, and the jurors are the exclusive judges of these matters. Every witness is presumed to speak the truth; but this is a rebuttable presumption which the adverse party has a right, either by independent testimony or on cross-examination, to destroy. If such were not the case men utterly unworthy of belief would be placed, in our Courts of justice, upon the same level with men of unimpeachable integrity and credibility.

One of the main purposes of cross-examination is to test and, if the circumstances warrant it, to destroy the credibility of a witness. This is done by discrediting the witness. A reference to a few reported cases on this subject we think will suffice:

The Supreme Court of the United States has laid down the rule as follows:

> "Cross-examination is the right of the party against whom the witness is called, and the right is a valuable one as a means of separating hearsay from knowledge; error from truth; opinion from fact, and inference from recollection, and as a means of ascertaining the order of the

events as narrated by the witness in his examination in chief; and the time and place when and where they occurred, and the attending circumstances: and of testing the intelligence, memory, impartiality, truthfulness and integrity of the witness."

The Ottawa v. Stewart, 70 U. S. 165; 18 L. Ed. 165, 167.

Jones in his Commentary on the Law of Evidence (2nd Ed.), volume 5, section 2345, announces the rule as follows:

"The party who produces a witness vouches for his credibility, but the cross-examiner sustains no such relation to the witness and has full liberty to test his credibility. For the purpose of testing the credibility of a witness it is permissible to investigate the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclinations and his prejudices."

Further on in the same section this learned writer states:

"It is said that a witness may be asked any questions which tend to test his accuracy, veracity or credibility or to shake his credit by injuring his character; and to this end his way of life, his associations, his habits, his prejudices, his mental idiosynerasies may be relevant."

In 28 *R. C. L.*, page 607, section 197, the purposes for which cross-examination are permitted are fully set forth supported by abundant authority in the footnotes thereto. This section reads as follows:

"A question will not as a rule be allowed on cross-examination which is obviously irrelevant, but a witness may be cross examined as to matters irrelevant to the issue, in order to discredit his testimony by what he himself may state in answer although not for the purpose of contradicting him by another witness. This is true regardless of the rule prevailing with respect to the scope of cross examination as to matters directly material to the issue. Although as to these matters the cross examination cannot extend beyond the range of the direct examination, yet the fullest inquiry must be allowed into collateral matters, whether they have been the subject of direct examination or not. In fact, this line of inquiry is one of the most important purposes of cross examination and is the principal factor in establishing cross examination as one of the chief agencies for the development of the truth in judicial inquiries. By means thereof the relation of the witness to the cause or the parties, his bias or interest, if he has any, his character for truth and veracity, indeed any collateral fact which may bear on his truthfulness and impartiality may be brought to light. *Any question may be put which reasonably tends to explain, contradict, or discredit any testimony given by him, or to test his accuracy, memory, veracity, or credibility.* Cross examination with a view to direct impeachment is not the limit of the right" (italics ours).

The Supreme Court of California has held that the object of cross-examination is to test the credibility of a witness:

"The object of cross-examination is to test the credibility, knowledge and recollection of a wit-

ness as to his testimony on direct examination (Greenl. Ev., sec. 446)."

Sharp v. Hoffman, 79 Cal. 402, 408;

People v. Hart, 153 Cal. 261, 267.

In 40 *Cyc.* page 2563, sec. 6, it is stated that:

"* * * it has been laid down that there are but four modes of impeaching the credit of a witness: (1) by cross-examination; * * *"

Further on in the same work we find the following language:

"On cross-examination it is permissible to ask a witness questions for the purpose of testing his reliability and affecting his credit and for this purpose great latitude is allowed."

40 *Cyc.* p. 2564.

The foregoing authorities could be many times multiplied but we believe that they sufficiently establish the right to attack the credibility of a witness on cross-examination. In dealing with what matters may be gone into on such a cross-examination we will hereafter set forth additional cases which support the foregoing doctrine.

It being proper to attack the credibility of a witness on cross-examination the next query is: to what subjects may such a cross-examination relate? The answer is that it can relate to any subject which bears upon the character, morals, occupation, associates, integrity or credibility of the witness. Such cross-examination need not be confined to the points and issues in the case or to the matters touched upon in the witness's direct examination. This purpose is

likewise firmly established by the authorities a very few of which we will quote from:

"By the great weight of authority it has always been permissible upon cross examination to inquire into the antecedents of a witness by showing his occupation, social connections, manner and place of living, and the like. Being matters largely of his own choice, they indicate his true character. He is therefore responsible for them, and they may be inquired into for the purpose of affecting his credibility. This is useful in enabling the Court or Jury to comprehend just what sort of person they are called upon to believe, and such a knowledge is often very desirable. If he has been voluntarily engaged in any occupation which would tend to impair his credibility, the Jury is entitled to that information. The fact that he has gone under an assumed name may be inquired into on cross examination, and, since it is always proper to ask a witness as to his place of residence, he may be required to answer though his answer will show that he is in jail."

28 *R. C. L.* p. 610, sec. 199.

"* * * a witness may be cross examined as to matter irrelevant to the issue in order to discredit his testimony by what he himself may state in answer although not for the purpose of contradicting him by another witness. This is true regardless of the rule prevailing with respect to the scope of cross examination as to matters directly material to the issue."

28 *R. C. L.* p. 607, sec. 197.

"Matters brought out on cross-examination, which are legitimate for the purpose of enabling the Jury to determine the credibility of a witness,

are not objectionable, although they may relate to questions not in issue in the case."

Vindicator, etc. Mining Co. v. Firstbrook, 86 Pac. (Colo.) 313, 314.

The reasons supporting the right to ask such questions on cross-examination have been summed up as follows:

"* * * it is always competent to interrogate a witness on cross-examination touching his present or recent residence, occupation, and associations. * * * When (these facts are) disclosed on cross-examination it is exclusively for the jury to determine whether any truth can come from such source, and, if so, how much."

Hollingsworth v. State, 14 S. W. (Ark.) 41, 42.

"At first these questions might seem open to the objection of being collateral and irrelevant, and for that reason not permissible, even under the latitude given on cross-examination. Yet, for the purpose of showing the character of the witness, and the degree of credit to be given to his testimony, we think they were proper. These were matters of the highest importance to the jury, who from the testimony were to determine the guilt or innocence of the defendant. For these purposes, questions tending to show the present or recent places of residence, occupation, association and acquaintances of the witness, of his own choice cannot be considered as irrelevant."

Kirschner v. State, 9 Wis. 140.

Up to the time Bradley was called as a witness the Government had elicited from each of its other witnesses his or her address. This was not done of Brad-

ley. Why did the United States Attorney object to this particular witness telling where he lived? Was it because he knew the answer would injure the witness before the jury and impair his credibility? Undoubtedly so.

When the attorney for appellant told the Court he had information to the effect that Bradley was then in the custody of the Federal authorities, why did not the United States Attorney deny this? He made no such denial (Trans. p. 198). If the statement of appellant's attorney in this regard was not true the Government's attorney undoubtedly would have stated the contrary to the Court.

If appellant had been allowed to pursue this most proper line of cross-examination this witness' credibility before the jury may have been completely destroyed and a different verdict returned.

The Supreme Court of the United States has recognized these rules in a case where a female witness was asked with whom she was then living and if she was not living with one other than her husband. Objections were sustained to these questions on the ground that they were immaterial and incompetent. The defendant was convicted and the Supreme Court promptly reversed the cause for failure to allow such questions to be answered. In doing so the Court said:

> "We think answers to all of these questions should have been permitted. The questions were directed to the purpose of showing material facts bearing upon the character and credibility of the witness, and the counsel for the defendant ought to have been permitted to proceed with his ex-

amination and obtain answers from the witness to that end."

Tia-Koo-Yel-Lee v. U. S., 167 U. S. 274, 42 L. Ed. 166, 167.

The Supreme Court in further commenting on this case stated:

"And in speaking of the refusal of the court to permit answers to be given to the questions asked, as above recited, counsel for the government also says in his brief:

" 'No reason is given for the exclusion of these questions beyond that reiterated in the objection, that they were 'incompetent, irrelevant and immaterial.'

"He frankly says that in his opinion this evidence was admissible, and we have no doubt that it was."

Tia-Koo-Yel-Lee v. U. S., supra.

In the case of *Furlong v. U. S.*, 10 Fed. (2nd) 492 (C. C. A. 8), two Government witnesses were asked on cross-examination whether they had not had trouble with the defendant and whether they did not entertain unfriendly feelings toward him. This line of examination was objected to by the Government and the objection sustained. The Circuit Court of Appeals for the Eighth Circuit said:

"This was clearly error. No rule is better established than the right to show the bias and prejudice of a witness towards a party to the suit as a part of his cross-examination. His answers are not relevant to the issue, but they do throw a direct light on the credibility of his evidence."

Furlong v. U. S., 10 Fed. (2d) 492, 494 (C. C. A. 8).

The fact that a witness is in custody becomes most material in determining the credibility of such witness and as to whether or not the testimony of such witness is colored by a promise of favor or immunity or *by the mere hope or expectation of favor or immunity:*

> "The prosecuting witnesses, before the time of the trial, had pleaded guilty to an indictment in the federal court: the verdict of guilt or innocence in the instant case depended primarily upon their credibility as against that of defendant who testified in denial of the demands and threats. As bearing upon their credibility, motive for false accusations, a well as bias, was vitally relevant, and testimony tending to show such motive was entirely competent. Concededly promises of immunity are admissible: they are, however, rarely made. Inasmuch as the question involved is the motive for testifying falsely and therefore the state of mind of the prosecuting witnesses, the revelant evidence is not alone the acts or attitude of the district attorney but anything else that would throw light upon the prosecuting witnesses' state of mind. *It is therefore entirely proper, either by cross-examination of the witness himelf, or otherwise, to show a belief or even only a hope on his part that he will secure immunity or a lighter sentence, or any other favorable treatment, in return for his testimony, and that, too, even if it be fully conceded that he had not the slightest basis from any act or word of the district attorney for such a belief or hope.* The fact that despite a plea of guilty long since entered, the witness had not yet been sentenced, is proper evidence tending to show the existence of such hope or belief.

"The trial judge, although at one time during the taking of testimony he had so ruled, later sustained the objection to similar testimony, and finally not only refused an instruction that the jury might consider the fact of the delayed sentence as bearing on such hope, but expressly instructed counsel that they must not argue the matter as affecting the motives of the witnesses.

"In our judgment, this was such error as to compel a reversal in the instant case. Stevens v. People, 215 Ill. 601, 74 N. E. 786; State v. Kent, 4 N. D. 577, 62 N. W. 631, 27 L. R. A. 686" (italics ours).

Farkas v. U. S., 2 Fed. (2nd) 644, 647 (C. C. A. 6).

"It is competent to show the fact that other criminal charges are pending in the same court against the witness at the time he testifies, not, however, as evidence of particular wrongful acts, for as to these he is presumed to be innocent, but as a circumstance tending to show that his testimony is or may be influenced by a desire to seek the favor or leniency of the court and prosecuting officers by aiding in the conviction of the defendant."

People v. Dillwood, 39 Pac. (Cal.) 438, 439.

It is always competent to inquire on cross-examination into the residence, occupation and antecedents of a witness for the purpose of testing and weakening the credibility of such witness. On this proposition the authorities are again voluminous:

"By the great weight of authority it has always been permissible upon cross-examination to inquire into the antecedents of a witness by

showing his occupation, social connections, manner and place of living, etc. Being matters largely of his own choice, they indicate his true character. He is therefore responsible for them, and they may be inquired into for the purpose of affecting his credibility. State v. Pfefferle, 36 Kan. 90, 12 Pac. 406; Musgraves v. State, 3 Okla. Crim. Rep. 421, 106 Pac. 544; Hendrix v. State, 4 Okla. Crim. Rep. 611, 113 Pac. 244; Crawford v. Ferguson, 5 Okla. Crim. Rep. 377, 45 L. R. A. (N. S.) 519, 115 Pac. 278; Fowler v. State, 8 Okla. Crim. Rep. 130, 126 Pac. 831; Burdette v. Com., 93 Ky. 76, 18 S. W. 1011; Leslie v. Com., 19 Ky. L. Rep. 1201, 42 S. W. 1095."

State v. Fong Loon, 158 Pac. (Idaho) 233; L. R. A. 1916F, 1198, 1202.

"As to one class of inquiry tending to degrade or debase a witness the courts are in comparative agreement. The right to inquire of a witness as to his occupation or residence for the purpose of discrediting him is generally recognized. As the Kentucky court points out, there seems to be no good reason why a witness should be privileged from answering a question touching his present situation, employment, and associates, if they are of his own choice; as, for example, in what house or family he resides; what is his ordinary occupation, and whether he is intimately acquainted and conversant with certain persons and the like. Although such questions may tend to disgrace him, his position in such regards is of his own seeking.

It is well settled on direct examination that a witness may be questioned as to his occupation, residence, and so forth, for the purpose of putting the jury in possession of those general facts

which are of the witness' own choosing and which all men instinctively consider in weighing the word of a person to them unknown."

Jones on Evidence (2nd Ed.), Volume 5, p. 4642.

"Counsel for the state did not ask the witness if he was engaged in gambling or conducting a gambling place. It was eminently proper, under the facts of this particular case, to have asked the witness upon cross-examination not only if the basement of the Chinese temple in which he resided was used on the night of the homicide as a gambling place, but what, if any, occupation he was following at the time in connection with such gambling resort, if he answered in the affirmative. This question was not asked for the purpose of impeachment as provided for under sec. 6082, Rev. Codes, or to establish the commission of a particular wrongful act, but for the express purpose of showing the business, occupation, manner, and place of living of the witness; and it is an elementary rule of evidence that such information may be elicited upon cross-examination. Hollingsworth v. State, 53 Ark. 387, 14 S. W. 41; Wallace v. State, 41 Fla. 547, 26 So. 713; State v. Ward, 49 Conn. 429."

State v. Fong Loon, 158 Pac. (Idaho) 233; L. R. A. 1916F, 1198, 1201.

The majority opinion states that these questions were asked of the witness Bradley for the purpose of discrediting the witness. As we have demonstrated the very purpose of cross-examination is to discredit the witness. It may be well to again call the Court's attention to the majority opinion (Trans. p. 499)

where it is clearly pointed out that appellant sought to elicit this information for the purpose of showing the bias or prejudice of Bradley.

The majority opinion expresses the view that evidence tending to disgrace or discredit the witness should be excluded by the trial Court. While it is true that the constitution of the United States protects a witness from self-incrimination further than this it does not go. Even where an answer might incriminate or tend to incriminate a witness the same must be answered *unless the witness personally claims his protection.* Anything short of self-incrimination does not fall within the protection of the constitution and a witness may be required to answer even though such answer may tend to disgrace him.

> "The object of the amendment is to establish in express language and upon a firm basis the general principle of English and American jurisprudence, that no one shall be compelled to give testimony which may expose him to prosecution for crime. *It is not declared that he may not be compelled to testify to facts which may impair his reputation for probity, or even tend to disgrace him; but the line is drawn at testimony that may expose him to prosecution.* If the testimony relate to criminal acts long since past, and against the prosecution of which the statute of limitations has run, or for which he has already received a pardon or is guaranteed an immunity, the amendment does not apply" (italics ours).

Hale v. Henkel, 201 U. S. 43; 50 L. Ed. 652, 662;

Brown v. Walker, 161 U. S. 591; 40 L. Ed. 819, 821.

To the same effect are the following authorities:

Jones on Evidence (2nd Ed.), Vol. 5, p. 4642, supra;

State v. Pancoast, 35 L. R. A. 518; 67 N. W. 1052;

40 *Cyc.* p. 2615;

Zanone v. State, 35 L. R. A. 556, 36 S. W. 711.

From a reading of all the foregoing authorities it is thus manifest that the failure of the trial judge to allow the cross-examination of Bradley constitutes reversible error. It was not necessary to show that Bradley had been convicted of a crime but it was only necessary to show that he was then in a position with respect to the Federal authorities which would tend to color any testimony he was then giving in the hope or for the purpose of procuring favorable treatment or consideration from the Government. As his was the most important testimony produced by the prosecution the Jury had a right to know his occupation, place of residence, associates and surrounding circumstances in order to properly judge his credibility. These facts could be elicited on cross-examination.

A party is not charged with any knowledge as to things which are personal to a witness produced by the other side. A defendant cannot be presumed to know the place of residence, occupation, associates or antecedents of a witness produced by the Government. He acquires this information for the first time on cross-examination of the witness. The answers elicited may not affect the witness' credibility and then again they may seriously destroy the effect of

such witness' testimony (see *People v. Stevenson*, 79 Cal. Dec. 141). This must be true because the rule is that on cross-examination counsel need not state what he expects to elicit from the witness.

40 *Cyc.* p. 2049;

Hyland v. Milliner, 99 Ind. 308.

While petitioner herein cannot be charged with any knowledge of what Bradley's responses would be to the questions, nevertheless he informed the Court that he had been informed that Bradley was then in the custody of the Federal authorities and that such fact was pertinent as to the question of the witness' credibility, bias or prejudice. The Government did not then and has not as yet denied that Bradley was under arrest or in custody and again we state that no other conclusion can be based upon these entire proceedings than that the Government prevented such questions from being answered knowing that the answers would destroy the credibility of the witness.

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3. **THAT PORTION OF THE MAJORITY OPINION WHICH UPHOLDS THE REFUSAL OF THE TRIAL COURT TO GIVE PETITIONER'S REQUESTED INSTRUCTION NO. 10 IS IN DIRECT CONFLICT WITH PRIOR DECISIONS ON THE SAME POINT OF THE SUPREME COURT AND OF CIRCUIT COURTS OF APPEAL OF OTHER CIRCUITS.**

The trial Court's oral instructions to the jury will be found set forth in full in the transcript from pages 379 to 398.

Among others, the petitioner requested an instruction marked "Defendant's Requested Instruction No. 10," which is set forth at page 401 of the transcript.

The second paragraph of this requested instruction reads as follows:

> "If you find that any promises made by the defendant were not fulfilled by him or that any representations as to future events did not occur as represented this, in and of itself, is not sufficient to establish the fact that the defendant did not intend to fulfill such promise or that he knew such representation to be false. In addition to the proof that such promise was not kept or that such representation was not fulfilled there must be evidence to establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled" (Trans. p. 401).

The foregoing instruction was one pertinent and necessary to petitioner's defense. There was evidence in the record to show that he never gave any deeds to the land he sold; that he never started the digging of any oil wells and that he never exercised all of his option or acquired title to all of the land described in the indictment. But, petitioner was not on trial for failure to do any of these things. He was on trial for mailing certain letters in furtherance of a scheme to defraud, an integral portion of which scheme consisted of certain alleged promises and representations *which at the time he made them he had no intention of fulfilling.* His defense was, in part, that any promises or representations made by him were made in good faith and with intent of performing the same. It was incumbent on the Government to prove that any such promises or representations were made with a knowledge and intent, *at the*

time of the making thereof, that they would not be fulfilled, and mere proof of their non-fulfillment or non-performance was insufficient to establish this knowledge or intent.

> "But if the Government were to prove beyond a reasonable doubt that she did not so use her thought, this would not meet the requirement of the indictments. *It must prove* not only that she did not administer this invisible and intangible treatment, but *that she did not intend to administer it*" (italics ours).
>
> *Post v. U. S.*, 135 Fed. 1, 6 (C. C. A. 5).

The majority opinion disposes of the refusal to give this instruction as follows:

> "As to instruction No. 10 referred to on page 72 of appellant's brief, the court did give substantially this instruction. The requested instruction states that the evidence must establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled, whereas the court properly instructed the jury that, if when the promise was made the defendant had no intention of performing, such promise was fraudulent" (Trans. p. 502).

In so disposing of this matter the majority opinion completely ignores the fundamental rule that a defendant in a criminal case is entitled to have the jury specifically instructed on all questions of law applicable to his defense or defenses. To tell the jury that a fraudulent promise is one made without intent of performing it is entirely different from

telling the jury that mere proof of nonperformance does not establish the fraudulent character of a promise.

The majority opinion is directly opposed to the prior decisions on this subject and ignores the right of a defendant to have his side of the case as fully presented to the jury, in the Court's instructions, as the side of the prosecution:

> "Where the evidence presents a theory of defense, and the court's attention is particularly directed to it, it is reversible error for the court to refuse to make any charge on such theory. Bird v. United States, 180 U. S. 356, 361, 21 Sup. Ct. 403, 45 L. Ed. 570; Hendrey v. United States, 233 Fed. 5, 18, 147 C. C. A. 75; Liner v. State, 124 Ala. 1, 7, 27 South. 438; Banks v. State, 89 Ga. 75, 14 S. E. 927. We think the court erred in refusing to charge the jury as to the defendant's theory of the case, and that such error requires a reversal of the judgment of conviction of the plaintiff in error."
>
> *Calderon v. U. S.*, 279 Fed. 556, 558 (C. C. A. 5).

"It is well settled that the defendant has a right to a full statement of the law from the court, and that a neglect to give such full statement, when the jury consequently fall into error, is sufficient reason for reversal. The numerous decisions to this effect are cited in Wharton on Criminal Law, vol. 3, sec. 3162, 7th ed. The chief object contemplated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view the rela-

tions of the particular evidence adduced to the particular issues involved."

Bird v. U. S., 180 U. S. 356, 361; 45 L. Ed. 570, 573.

"* * * the respondents in a criminal case, no less than the parties in a civil case, are entitled of right to have clearly stated to the jury each distinct and important theory of defense, so that the jury may understand that theory and the essential rules applicable to it. We cannot avoid the conviction that the respondents' rights in these respects in this case were not sufficiently saved by the general charge."

Hendry v. U. S., 233 Fed. 5, 18 (C. C. A. 6); *Carney v. U. S.*, 283 Fed. 398 (C. C. A. 8).

All of the foregoing cases were promptly reversed for failure to give a specific requested instruction as to the law applicable to one of defendant's defenses.

"Where there is evidence to support any defense offered by accused, which raises an issue of fact favorable to him, the court should present the issue by an affirmative instruction which fairly and fully declares the law applicable thereto, including the defining or explaining of the elements of the defense. A negative presentation of an issue favorable to defendant is not sufficient."

16 *Corpus Juris*, p. 971, sec. 2369.

"As a general rule, whether requested or not, the court should instruct on every essential question in the case so as to properly advise the jury of the issues. The court should submit every question suggested by the evidence, whether of-

fered by the prosecution or by the accused, or by both."

16 *Corpus Juris*, p. 963, sec. 2354.

"It is proper for, and generally the duty of, the court to state correctly in the charge both the claims made by the prosecution and those made by the defendant. * * * A theory presented solely by the statement of accused should be charged where a proper request therefor is made *and such charge should give the law fully and fairly both for the prosecution and for accused.*"

16 *Corpus Juris*, p. 964, sec. 2356.

The foregoing decisions and authorities lay down the invariable rule that it is reversible error not to fully charge upon any defense advanced by defendant. The defendant in this case advanced the defense that there were no promises or representations made by him which, at the time of making, he did not intend to fulfill. It became the duty of the trial judge to instruct the Jury fully on this phase of appellant's defense. Merely to tell the Jury that a promise was fraudulent if, when made, the defendant had no intention of performing it is but to instruct the Jury partially upon the law of this particular matter. The appellant was entitled to have the trial judge instruct on all phases of this question and to tell the Jury, especially when requested by appellant, what facts were insufficient to establish a fraudulent promise. In other words appellant had the undoubted right to have the Jury instructed that mere proof that a promise was not fulfilled in and of itself failed

to establish that such promise was made without intent of fulfilling it. In the absence of such requested instruction the Jury, under the charge as given, could and undoubtedly did find that because promises had been made and not kept by appellant, such fact established that appellant made them without any intent of fulfilling such promises.

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4. **THE MAJORITY OPINION RELATIVE TO THE INSTRUCTIONS AS GIVEN BY THE TRIAL COURT TO THE JURY IS IN CONFLICT WITH THE WEIGHT OF AUTHORITY.**

The Court instructed the jury as follows:

> "If the defendant intended to and did devise the scheme or artifice, as alleged, *and did make false and fraudulent representations and assurances for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, Oklahoma*, and of obtaining money by means of such false representations and pretenses, and for the purpose of executing such scheme, or attempting so to do, did place or cause to be placed the letters set forth in the several counts of the indictment in any post office or mail box of the United States in Los Angeles County, California, to be sent or delivered by the post office establishment of the United States, as alleged, then a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations. It may, however, be considered by the jury in connection with all the other evidence in the case in determining whether or not such representations, if made, were made with the intent to defraud as charged" (italics ours).

(Trans. p. 386).

To this instruction appellant duly excepted (Trans. p. 400) on the grounds that the instruction specified a false representation as to the ownership of land in Cimarron County. A reading of the indictment discloses that it was not alleged that defendant intended to or did make any false or fraudulent representations with respect to his ownership of land in Cimarron County, or of using such false or fraudulent representations for the purpose of executing the scheme or attempting so to do, or for deceiving any persons whatsoever. The indictment contains no reference to any false representations as to defendant's ownership of land either as an element of the alleged scheme to defraud or as a means of carrying it into effect and the majority opinion so finds (Trans. p. 502).

The foregoing portion of the Court's charge in effect tells the jury that such representations as to defendant's ownership of the land constituted a part of the alleged scheme to defraud. It further instilled into the jurors' minds the proposition that they could and should find the defendant guilty if they found that he made false statements and representations as to his ownership of this land.

This instruction was undoubtedly prejudicial to the defendant. Many witnesses testified in the cause as to the fact that defendant had stated he was only selling the land he owned and had paid for (see testimony of purchasers: Mrs. Stromberg, p. 150; J. R. Gordon, p. 154; G. R. McNeil, p. 161; F. Gunderlach, p. 162; P. Doring, p. 168; Ellen Hancock, p. 210; see also testimony of salesmen: Brubaker, p. 127; Bradley, p. 178; Sonia West, p. 269, etc.).

With all of this testimony before the jury the Court's instruction could have had no other effect than impressing the jurors with the fact that such representations constituted an important part of the scheme, which, if false, were sufficient to justify a finding that Alford had devised a fraudulent scheme.

The majority opinion (Trans. p. 502), while admitting there is no allegation in the indictment that it was part of the scheme that defendant should misrepresent his title, attempts to uphold the instruction on the ground that the Court instructed the jury "over and over that it was necessary to prove the allegation of the indictment beyond a reasonable doubt" and that "the allegations in the indictment concerning title were quoted in the instruction."

Circuit Judge Dietrich in his dissenting opinion (Trans. p. 505) says:

> "I further think * * * that there was error in giving an instruction in which reference was made to 'false and fraudulent representations and assurances for the purpose of deceiving persons with respect to defendant's ownership of the land,' for the reason that, as given, this instruction advised the jury that they should convict defendant for a fraud touching which evidence had been received but which was clearly beyond the scope of the charges as laid in the indictment."

This language in the dissenting opinion is in strict accord with petitioner's contention.

A Court in charging a jury should not give a confusing, conflicting or misleading instruction and to do so is reversible error.

No one can say which of the Court's instructions guided the jury and it can never be determined what effect a jury gave to any instruction given by a Court.

The only place in the instructions where the Court reads from the indictment at all is on page 388 of the transcript where the Jury is told that it was a part of the scheme that certain things should not be done. The Jury was instructed on July 31, 1929. The indictment was read to the Jury at the beginning of the trial on July 18, 1929, between which dates many witnesses testified. Under the charge as given by the Court, the instruction complained of caused the Jury to believe that as there were many misrepresentations made as to defendant's ownership of the land, this constituted part of the scheme to defraud. As there was testimony to this effect who can say but what the Jury considered this in and of itself sufficient to predicate a verdict of guilt upon?

Courts have always been careful to see that defendants in criminal cases are accorded fair and impartial trials and that Courts instruct the Juries fairly and without injecting false issues into the case.

In the case of *Bross v. U. S.*, 108 Fed. 804 (C. C. A. 4), the defendant had been convicted and his conviction affirmed by the Circuit Court of Appeals for the Fourth Circuit. A petition for a rehearing was filed whereupon the Circuit Court ordered a new trial solely upon the grounds that the trial judge in instructing the Jury as to one particular phase of the case said that in his opinion if certain facts were proven it was the duty of the Jury to convict. In this behalf the Court said:

"But, inasmuch as the strong opinion expressed by the judge below in his charge to the jury, in which he used the words 'that, in his opinion, it was the duty of the jury to convict the defendant,' was calculated to mislead the jury, who perhaps construed this language as a direction on the part of the court, we think that it would be proper to grant a new trial. For these reasons the case is remanded to the court below, with instructions to grant a new trial."

The general rule is stated in *Corpus Juris* with authorities from many states as follows:

"An instruction, whether given by the court of its own motion or requested, is erroneous and should not be given where it is calculated to confuse or to mislead the jury; as where it requires explanation or qualification, or limits the freedom of the jury in considering the evidence or is ambiguous, obscure, uncertain, unintelligible, or meaningless."

16 *Corpus Juris*, 1036, sec. 2477.

That the charge taken as a whole is correct will not cure this error:

"It is urged by the prosecution in this case, as it was in the People v. Valencia, 43 Cal. 552, and the People v. Wong Ah Ngow, 54 id. 151, that the charge as a whole is correct; i. e., that the jury, after being told that insanity need only be proved by a preponderance of evidence, would necessarily infer that Lord Mansfield erred in saying that 'it must be proved beyond all doubt,' or rather, that the rule had been changed since his time. *What the jury did or did not infer can never be known. Viewed in the most favorable light, the tendency of the charge was to confuse*

the jury who, however intelligent, cannot be presumed to have been equal to the task of carefully discriminating between the views of Lord Mansfield and those of this Court, and of adopting the latter's in preference to the former's. This is the only exception which appears to have been well taken.

"Judgment and order denying a new trial reversed, and cause remanded for a new trial" (italics ours).

People v. Messersmith, 57 Cal. 575.

CONCLUSION.

We believe that the foregoing demonstrates that the majority opinion of the Circuit Court of Appeals should not be allowed to stand as a future guidance for the trial of criminal cases within the Ninth Circuit. Not only does the majority opinion announce erroneous rules of law but it does so in direct conflict with prior opinions of long standing on identically the same points.

If the rulings announced in the majority opinion are not set aside defendants on trial for criminal offenses within the Ninth Circuit will be deprived of the benefits of the provisions of the Fifth Amendment to our Constitution; their right of cross-examination of adverse witnesses, one of the most valuable rights a defendant has for the establishment of the truth, will be curtailed and abridged; defendants will be tried and convicted of offenses as formulated by trial judges and prosecuting attorneys and not as found by Grand Juries and they will be denied those fair and

impartial trials in accordance with our established rules of procedure as guaranteed by our Constitution, the laws and decisions of our Courts.

Dated, San Francisco,
August 11, 1930.

Respectfully submitted,
THOMAS M. FOLEY,
Attorney for Petitioner.

LEO R. FRIEDMAN,
Of Counsel.

FILE COPY

DEC

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

No. 370

J. W. ALFORD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

On Certiorari to the United States Circuit Court of Appeals For the Ninth Circuit.

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On Certiorari to the United States Circuit Court of Appeals For the Ninth Circuit.

Petitioner, in his brief in support of his petition for a writ of certiorari has fully argued the law relative to the points raised. He respectfully requests that such brief be considered as his brief on the merits and files this supplemental brief in amplification thereof and in answer to the counter-contentions in the Government's brief in opposition thereto.

OPINION BELOW.

The majority opinion of the Circuit Court of Appeals (R. p. 492), and the dissenting opinion (R. p. 503), are reported in 41 F. (2d) 157.

JURISDICTION.

The judgment sought to be reviewed was entered on May 26, 1930 (R. p. 506). A petition for rehearing was denied on June 26, 1930 (R. p. 507).

The petition for certiorari was filed on August 21, 1930. On October 20, 1930, an order was entered granting the petition.

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The petitioner, J. W. Alford, was indicted on January 3, 1929, by the Grand Jury of the United States in and for the Southern District of California, Central Division. Said indictment charged the defendant with six violations of Section 215 of the Criminal Code of the United States or, as it is more commonly called, with using the United States mails for the purpose of executing a scheme or artifice to defraud. The indictment is set forth at length from pages 3 to 15 of the transcript of record.

The indictment alleges but one scheme to defraud which scheme is incorporated in toto in each of the

six counts. The alleged offenses consisted in mailing six separate letters in furtherance of this one specific scheme.

At the beginning of the trial Count No. 4 was dismissed on motion of the petitioner as being a repetition of Count No. 1 (Trans. pp. 27, 81). During the trial Count No. 3 was dismissed on motion of the United States Attorney (Trans. p. 190).

The petitioner pled not guilty to each of the counts of the indictment and seasonably moved the trial Court for an order directing the Government to furnish him with a bill of particulars, which motion and demand for said bill of particulars is set forth beginning with page 15 of the transcript of record. This motion was by the Court granted in part but otherwise denied by the trial Court. No ground of error is urged herein as to the refusal of the Court to grant any part of the demand and mention of the same is only made herein because the Government, in conforming to the order granting in part the bill of particulars, limited the charge to certain items and dates (Trans. pp. 21 and 23).

Upon such indictment and the bill of particulars as furnished by the Government the cause proceeded to trial before the Honorable William H. Sawtelle and the jury.

One of the main points relied upon by petitioner is that the state of the case and record as it was when the cause was submitted to the jury resulted in the defendant being tried and convicted in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

This point arose due to the fact that the indictment specifies the scheme to defraud to have consisted of twelve major and essential elements. The Court excluded testimony relative to several of these major elements and no evidence proving or tending to prove them was introduced in the case at all. When the cause was submitted to the jury they were authorized to determine the guilt or innocence of defendant upon a scheme or plan to defraud different than that as found and charged by the Grand Jury. This point was raised on the motion for a directed verdict made at the conclusion of the Government's case in chief (Trans. p. 251) and on a similar motion made at the close of all the testimony (Trans. p. 376). It was likewise urged in appellant's motion for a new trial (Trans. p. 403).

During the trial the Government produced as one of its chief witnesses a man named Cameron Bradley, whose testimony, if true, was most damaging to petitioner (Trans. pp. 176-209). On cross-examination petitioner sought to elicit from this witness his then address and place of residence (Trans. p. 191). The Court sustained objections to this line of inquiry. Petitioner further maintained that he was informed the witness was then in the custody of the Federal authorities and that he had a right to question him upon this in order to show his bias or prejudice (Trans. 198). The trial Court refused to permit such cross-examination on the objections of the Government. The Circuit Court of Appeals, in its majority opinion, holds that these rulings of the trial Court were correct, which holding is in direct conflict with

prior decisions of the Supreme Court and of the Circuit Court of Appeals from other than the Ninth Circuit.

The trial Court refused to give an instruction, requested by petitioner, pertinent and necessary to his defense (Requested Instruction 10; Trans. p. 401). The refusal to give this instruction was upheld by the Circuit Court of Appeals, in its majority opinion, which holding is in direct conflict with prior decisions of this Court and of Circuit Courts of Appeal from other than the Ninth Circuit.

The trial Court instructed the jury in such manner as to authorize the jurymen to return a verdict of guilty upon proof of representations made by petitioner and which were not a part of the alleged fraudulent scheme as set forth in the indictment (Trans. p. 401). Contrary to prior decisions of Circuit Courts of Appeal from other than the Ninth Circuit the giving of such an instruction was upheld by the Appellate Court.

The jury found the petitioner guilty as charged in Counts I, II, V and VI of the indictment (Trans. p. 68). Petitioner moved the Court for a new trial which motion was denied (Trans. p. 403). Thereafter petitioner moved in arrest of judgment which motion was denied (Trans. p. 404).

Thereupon the Court made its judgment and sentenced petitioner (Trans. p. 406).

Petitioner thereafter duly brought and perfected his appeal to the United States Circuit Court of Appeals for the Ninth Circuit. The convictions of

judgments appealed from were affirmed, by a divided Court on May 26, 1930. The majority opinion was written by Mr. Justice Wilbur and concurred in by Mr. Justice Rudkin (Trans. pp. 492-503). Mr. Justice Dietrich filed a dissenting opinion (Trans. pp. 503-506).

Thereafter a petition for a rehearing was filed and denied by said United States Circuit Court of Appeals (Trans. p. 507).

SPECIFICATION OF ERRORS RELIED UPON.

It is petitioner's contention:

First, that he was denied the benefits and convicted in violation of the provisions of the Fifth Amendment to the Constitution of the United States in that the action of the lower Court in permitting the cause o go to the jury without proof of certain essential elements of the indictment was in effect an amendment of the indictment. That the majority opinion of the Circuit Court of Appeals upholding such action of the trial Court is contrary to prior decisions of the Supreme Court of the United States and of many other Circuit Courts of Appeal, such as the cases of *Ex parte Bain*, 121 U. S. 1, 30 L. Ed. 849; *Naftzger v. U. S.*, 200 Fed. 494 (C. C. A. 8).

Second, that the majority opinion of the Circuit Court of Appeals relative to the right of petitioner to cross-examine the witness Cameron Bradley is in direct conflict with prior decisions of the Supreme Court of the United States and of prior decisions

rendered by the United States Circuit Courts of Appeal of other circuits, such as the decisions rendered in:

Tla-Koo-Yel-Yee v. U. S., 167 U. S. 274;
The Ottowa v. Stewart, 20 U. S. 165;
Furlong v. U. S., 10 Fed. (2d) 492 (C. C. A. 8);
Farkas v. U. S., 2 Fed. (2d) 644 (C. C. A. 6).

Third, that the majority opinion of the Circuit Court of Appeals in so far as it deals with the refusal of the trial Court to give defendant's requested Instruction No. 10 is in direct conflict with prior decisions on the same point of the Supreme Court of the United States and of Circuit Courts of Appeal of other circuits, such as the cases of:

Byrd v. U. S., 180 U. S. 356;
Calderon v. U. S., 279 Fed. 556 (C. C. A. 5);
Hendry v. U. S., 233 Fed. 5 (C. C. A. 6);
Carney v. U. S., 283 Fed. 398 (C. C. A. 8).

Fourth, that each of the matters passed upon in the majority opinion of the Circuit Court of Appeals is an important question of general law and decided in a way untenable and in conflict with the weight of authority.

Fifth, that the majority opinion of the Circuit Court of Appeals relative to the instructions as given by the trial Court to the jury is in conflict with the weight of authority.

Sixth, that the dissenting opinion of Mr. Justice Dietrich correctly states the law as found in the prior decisions of this Court and Circuit Courts of Appeal.

ARGUMENT.

1. AS TO THE FAILURE OF THE GOVERNMENT TO PROVE THE ALLEGATIONS OF THE INDICTMENT RELATIVE TO THE SO-CALLED "TEN-WAY-TO-WIN-SYNDICATE."

Petitioner has raised two points relative to the failure of the government to prove the allegations relative to the "Ten Way To Win Syndicate." These points are as follows:

(a) That his conviction, in the absence of such proof, was in violation of the Fifth Amendment to the Constitution, and

(b) The majority opinion, affirming such conviction, in the absence of such proof, is in direct conflict with prior decisions from other circuits and of the Supreme Court.

The Solicitor General has attempted to answer only the first point by relying on the cases of *Salinger v. United States*, 272 U. S. 542; *Silkworth v. United States*, 10 F. (2d) 711 and *Beahan v. United States*, 13 F. (2d) 558.

The case of *Salinger v. U. S.*, supra, was on a writ of error to the District Court of South Dakota and presented a situation totally different from the case at bar. The indictment in the *Salinger* case set forth several distinct fraudulent schemes and the trial Court, on motion of defendant, withdrew all but one of these schemes from the consideration of the jury, as was pointed out in this Court's opinion (272 U. S. 548):

> "The scheme to defraud as set forth in the indictment was manifold in that it comprehended several relatively distinct plans for fleecing in-

tended victims. What the court withdrew from the jury was all of these plans but one."

This Court refused to pass on the correctness of the trial Court's action and transferred the cause to the proper Circuit Court of Appeals for a review of the judgment. On such review the Circuit Court of Appeals reversed the conviction, on the ground there was no evidence to establish that Salinger used the letter for the purpose of executing the specific scheme which had not been withdrawn from the jury:

> " * * * there was not in this case any such substantial and relevant evidence as could sustain beyond a reasonable doubt a finding that the defendant Salinger, Jr., devised or used the letter set forth in count 7 for the purpose of executing the fraudulent artifice, device, or scheme described by the court and submitted to the jury."
>
> *Salinger v. United States*, 23 Fed. (2d) 48, 52, (C. C. A. 8).

This conclusion of the Circuit Court is identical with the one that should have been arrived at in the instant case.

A further reading of the decision of the Circuit Court in the *Salinger* case discloses that the indictment contained fourteen counts, alleged the scheme to defraud and "The indictment, after alleging this scheme, fills 12 printed pages of the record with averments of alleged acts of the defendants, *which it declares they did in executing the scheme*, * * *." (23 Fed. (2d) 49). On page 50 of the reported case the Court points out that the matters withdrawn from

the consideration of the jury were four "alleged fraudulent means of executing the plan."

In the *Salinger* case the scheme to defraud, as found by the Grand Jury, at all times remained the same and was not added to or subtracted from by any action of the trial Court.

Silkworth v. United States, 10 Fed. (2d) 711, presents no better situation so far as the Government is concerned. In that case the Grand Jury returned an indictment alleging two schemes, the first aimed at one set of alleged victims and the second aimed at a different set. This distinction is pointed out by the Circuit Court of Appeals on pages 714 and 715 in upholding the action of the trial Court in disregarding the first of the alleged schemes:

> "The fallacy of the claim that the indictment is bad is due to the failure of the plaintiffs in error to observe that charges 1 and 2, as above given, are independent of each other. * * * The language used relates to different groups of victims." (10 Fed. (2d) 714-715).

Thus, the second scheme was not tampered with and remained and was proved exactly as the Grand Jury had charged it.

Lastly, the Government cites *Benham v. United States*, 13 Fed. (2d) 588. This case had previously been before the Court (*Benham v. U. S.*, 7 Fed. (2d) 271). The point as to the failure of the Government to prove an essential allegation of the indictment was neither raised nor decided therein.

The foregoing cases, and several others which were not cited by the Government, are based upon situa-

tions totally different from that of the instant case and hold no more than where the indictment properly charges a fraudulent scheme *and* various means of carrying out such scheme, it is not necessary to prove all *of the means* used to further the alleged scheme; but there is no reported case, which we know of, holding that an essential element of the *scheme* as charged by the Grand Jury may be disregarded and need not be proved by the Government.

In the case at bar (as in several other cases dealing with prosecutions under Section 215, Criminal Code) the majority opinion has lost sight of the ruling made by this Court in *United States v. Hess*, 124 U. S. 483, 31 L. Ed. 516, that pleading this offense in the language of the statute is not sufficient:

> "The statute upon which the indictment is founded only describes the general nature of the offense prohibited; and the indictment in repeating its language without averments disclosing the particulars of the alleged offense, states no matters upon which issue could be formed for submission to a jury. * * * As a foundation for the charge, a scheme or artifice to defraud must be stated, which the accused either devised or intended to devise, with all such particulars as are essential to constitute the scheme or artifice, and to acquaint him with what he must meet on the trial." (124 U. S. 486-487; 31 Ed. 517-518)

and in the concluding sentence of the opinion this Court states:

> "Such particulars are matters of substance and not of form, and their omission is not aided or cured by the verdict."

In obedience to the foregoing decision the Grand Jury set forth the particulars constituting the alleged fraudulent scheme and expressly declared the matters relating to the "Ten Way to Win Syndicate" to be essential and integral parts of the scheme. No Court, therefore, can construe an allegation which the Grand Jury has found and designated *as such integral part of the scheme* as being *merely a means* for carrying the scheme into effect or to a successful conclusion. The majority opinion of the Circuit Court of Appeals has overridden the finding of the Grand Jury in this regard and holds the "Ten Way to Win Syndicate" allegations to be merely "means" or "plans" which the appellant devised "for his escape from the predicament in which his fraud placed him" (R. p. 497).

Neither the trial Court nor the Circuit Court had the power to substitute its opinion for the express finding of the Grand Jury.

The Grand Jury set forth a scheme to defraud of which the "Ten Way to Win Syndicate" matters were integral parts and charged that in furtherance of such scheme that the various letters were mailed. Any action of the trial Court which permitted the trial jury to convict petitioner for mailing these same letters in furtherance of some other scheme of which the "Ten Way to Win Syndicate" matters formed no part, was in substance and effect an amendment of the indictment.

The Government seems to rely upon the proposition that an indictment can only be amended by some physical act apparent to the eye on an inspection of

the indictment, such as drawing a pen through portions thereof. If such were true, then great regard would be given to mere matters of form and none paid to matters of substance; courts would then be permitted to do indirectly that which they could not do directly.

We submit that any action of the trial Court, whether it be on the face of the indictment or in some other manner, which alters the charge as found by the Grand Jury, is to all legal purposes and effect an amendment of the indictment.

Thus, in *Naftzger v. U. S.*, 200 Fed. 494, (C. C. A. 8) the Court held that to disregard and fail to prove an essential allegation of the charge was in effect an amendment of the indictment, even if indictment would have stated a public offense had such allegation been omitted therefrom by the Grand Jury.

In *United States v. Dombowski*, 252 Fed. 894, the indictment charged the defendant, in one count, with having violated the Espionage Act by doing all of the acts denounced by Section 3 thereof. The District Attorney asked leave to elect to rely upon one of the acts charged and nolle pros the others. In denying this request the trial Court said (p. 898):

> "It seems clear that, if the District Attorney is permitted to nolle pros a portion of this indictment, he will thus, in effect, be permitted to amend it, because, in that event, the indictment on which the defendant is tried will not be the same as that found by the grand jury. * * * In Words and Phrases, vol. 1, First Series, at p. 368 et seq., and in vol. 1, Second Series, at p. 199

et seq., numerous authorities are cited and quoted showing that an amendment may consist of either the addition to, or the withdrawal from, a pleading or document of a part thereof."

The Court then applied the reasoning adopted in *Ex Parte Bain*, 121 U. S. 1, in the following manner:

"It is quite possible that if the indictment in the present case had been limited to one of the various crimes now charged therein, before it had been presented to the grand jury, the latter might not have been willing to return it in that form. It is not unlikely that the required number of jurors were satisfied to return the indictment in its present broad form because of a belief that its scope would be narrowed, as it is now sought to narrow it, to a single offense before the trial. Some members of that tribunal, less than the number necessary to find a true bill, may have found probable cause to believe that one of the crimes thus charged had been committed, while others may have been satisfied of the commission of another of such crimes, but may not have been willing to return an indictment joining these various offenses, except upon the understanding that the defendant would not be actually tried for all such offenses. If this be so, it is impossible to know whether the required number of jurors would have voted for a bill charging only the offense which the District Attorney may elect to rely on. At all events, it certainly cannot be said that if part of this indictment be removed the remainder will constitute the indictment as returned by the grand jury" (p. 899).

In the case at bar, if the trial judge had drawn a pen through the portions of the indictment dealing

with the "Ten Way to Win Syndicate," no question would arise as to his act constituting an amendment of the indictment. If he had made a written or minute order striking out such portions still no question would be raised that such act also constituted an amendment, even though the indictment itself was not defaced. When the trial judge allowed the case to go to the jury, over the objection of petitioner (R. pp. 251, 376), without proof of such material allegations of the indictment, he just as effectively amended the indictment by striking such portion therefrom as if he had done any or all of the foregoing acts.

Petitioner further contends that the majority opinion in affirming his convictions, in the absence of proof relative to the "Ten Way to Win Syndicate" is in direct conflict with prior decisions of this Court and of other Circuit Courts of Appeal.

The majority opinion devotes several pages to upholding the convictions in the absence of such proof (R. pp. 492-498).

We have pointed out, on pages 9 to 28 of our brief attached to our petition herein, that the Grand Jury set forth the allegations regarding the "Ten Way to Win Syndicate" as essential elements of the alleged fraudulent scheme.

The particulars of the scheme, as set out in the indictment, are matters of substance and not of form.

United States v. Hess, 124 U. S. 483, 489;

Brooks v. United States, 146 Fed. 223, 227 (C. C. A. 8);

Brown v. United States, 146 Fed. 219, 220.

As Section 215, Criminal Code, does not contain a definition of what constitutes a scheme to defraud, the details and particulars of such scheme must be found and set forth in the indictment by the Grand Jury (*United States v. Hess*, supra; *Brown v. United States*, supra).

The particulars of the scheme thus become material parts of the indictment, descriptive of that which is legally essential to the charge and must be proved in evidence and can never be rejected as surplusage (*U. S. v. Sauer*, 26 Fed. Cas. 388, case No. 15,403).

A party can only be tried upon the indictment as found by the Grand Jury and especially upon all its language found in the charging part (*Ex Parte Bain*, 121 U. S. 1; 30 L. Ed. 849); and the evidence must conform to and support all the material allegations thereof (*Nuttycombe v. U. S.*, 200 Fed. 194 (C. C. A. 8th)).

If the scheme as alleged is not established by the proof a defendant cannot be convicted (*Brown v. U. S.*, 146 Fed. 219, 220).

The majority opinion, affirming the conviction without proof of these material allegations of the scheme, as found and charged by the Grand Jury, is diametrically opposed to the foregoing decisions.

The Government, on page 4 of its brief in opposition to our petition, seems to lay some stress on the fact that the evidence relative to the "Ten Way to Win Syndicate" was stricken out on motion of petitioner and not the Government. We cannot see how it becomes material whether this evidence was stricken

the case at all. The only reason that suggests itself is the Government mentions this fact so as to convey the impression that its failure to prove these material matters was an error invited, in some way, by petitioner.

Petitioner does not contend that the Court erred in admitting incompetent or immaterial testimony at his invitation or without objection on his part. Petitioner does not contend that the Court erred in striking out this testimony. It is our contention the Court was correct in striking out all testimony relative to the "Ten Way to Win Syndicate" and that the exclusion of such testimony resulted in the Government being unable to prove the alleged scheme to defraud as found by the Grand Jury.

Petitioner's motion to strike out this testimony was as follows (R. p. 133):

> "Mr. Friedman. Before cross-examining I desire to ask the Court for an order striking all the testimony of this witness as to the Ten-Way-To-Win Syndicate on the grounds the same is incompetent, irrelevant and immaterial and no proper foundation has been laid for it in this, that the indictment and the bill of particulars furnished by the Government specify that the Ten-Way-To-Win Syndicate and everything pertaining thereto was part of the original plan and scheme formed by Mr. Alford, which they place in the bill of particulars as having been formulated on or about the 17th day of January, 1927.
>
> There was no foundation laid and there has been no proof up to the present time that the Ten-Way-To-Win Syndicate ever had any exis-

tence in thought or in fact in Mr. Alford's mind or any one else's mind prior to the 23rd day of May, when this witness testified he had a conversation relative thereto. As I understand it, the Government is bound by its specifications as to what this plan and scheme consisted of. If there was a part that occurred in January without any thought of anything that was going to occur the next May, and when May came around and a new plan of operation was evolved, that could not be the plan relied upon by the Government in this case."

In striking out this testimony the trial Court acquiesced in and adopted the reasoning and grounds contained in petitioner's motion by stating

"* * * * the indictment alleges that it was a part of the alleged original scheme, while the testimony in my judgment, does not so show" (R. p. 148).

This action of the trial Court was in direct conformity with our contention. The "Ten Way to Win Syndicate" matters being a part of the original scheme, and so alleged in the indictment, proof thereof and that it was part of the original scheme was necessary on the part of the Government.

The Government made no effort to introduce any other testimony of the "Ten Way to Win Syndicate" or to lay any foundation or predicate for the admission of such testimony either in its case in chief or in rebuttal.

The ruling of the trial Court in this behalf was proper. It was not error invited by appellant but

the assertion of a right the correctness of which the trial Court upheld. Nothing appellant did at the trial can be used to cure the failure of the Government to prove a matter of substance alleged in the indictment as an integral part of the scheme to defraud. The burden was on the prosecution to prove the scheme as alleged and its failure to do so cannot be excused or cured by any act of appellant.

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2. AS TO THE CURTAILMENT OF THE CROSS-EXAMINATION OF THE WITNESS BRADLEY.

This point has been fully argued in our original brief, pages 31 to 48.

The Solicitor General on page 6 of the Government's brief in opposition to our petition, admits the correctness of our contention in the following words:

> "Although we question the correctness of the ruling, it would hardly seem to constitute reversible error, as it is not shown that prejudice resulted."

This admission of the Solicitor General causes this case to present a situation identical with the one presented in *Tia-Koo-Yet-Lee v. United States*, 167 U. S. 274; 42 L. Ed. 166, where this Court reversed a conviction solely on the grounds urged under this point by petitioner.

The Government suggests that no showing is made that prejudice resulted from this ruling. Cameron Bradley was the most important witness called by the Government. Without his testimony no convic-

tion could ever have been had. He testified to many conversations alleged to have occurred with petitioner when no one else was present, which conversations were denied by petitioner. Thus, it was incumbent on the jury to decide whether Bradley or petitioner was worthy of belief. Any deprivation of the right of legitimate cross-examination of this witness, affecting his credibility, resulted in great prejudice to petitioner. Bradley's testimony will be found in the record from pages 176 to 209 and from 373 to 375. Merely to read this witness' testimony establishes how vital it was to the Government's case and how necessary it was for the Government to preserve this witness' credibility before the jury.

What other showing of prejudice could possibly be made by petitioner? He could not prove or offer to prove the witness' bad reputation for truth, honesty and integrity, because the Government's objection prevented him from learning the residence of the witness. He could not show the association, place or manner of living of the witness nor his bias or prejudices, nor that his testimony was colored by some hope of reward or immunity for like reason. In other words the Government contends we should demonstrate that which the Government has made it impossible for us to demonstrate.

Mr. Justice Dietrich, in his dissenting opinion, disposes of this contention as follows (R. p. 505):

> "It comes with poor grace from the district attorney now to say that even if erroneous, the ruling was not prejudicial. If he did not fear the effect of the desired disclosures, why did he

> so promptly and persistently resist the offer to make them? To me it is little less than amazing that objection was interposed to a simple inquiry as to where the witness lived."

The best evidence that the ruling was prejudicial to petitioner is found in the prompt and persistent objections of the Government to (as Mr. Justice Dietrich terms it) this "natural and ordinary inquiry which defendant was seeking to make."

The contention of the Government that the burden was on petitioner to show prejudice has been fully answered in a recent decision of the Supreme Court of California. In the case referred to the district attorney had used a transcript of testimony taken before the Grand Jury in examining a witness. An inspection of the transcript was denied the defendant. On appeal defendant complained of this action and the prosecution attempted to justify it on the ground that defendant had shown no prejudice as a result thereof. The Supreme Court thus disposed of the matter (emphasis ours):

> "Where a transcript is made under the circumstances here shown and used by the district attorney in the manner related by the decision, and its contents are denied inspection by the defendant, it comes in poor grace for the People to invoke the provisions of article VI, section 4½, of the Constitution, to the effect that the burden is upon the appellant to show prejudicial error. The only way in which prejudicial error could possibly be shown is by an inspection of said transcript and this right has been denied him. It was not intended that said constitutional pro-

visions should be applied in such a case. *To so apply them it would require a showing on the part of the defendant which is rendered impossible by the act of his adversary.* The constitutional provisions impose the burden of showing prejudice or injury by a ruling which is within the power of the complaining party to present. *It does not contemplate a situation where such party without fault has been denied an opportunity to determine whether or not he has been prejudicially injured.*"

People v. Stevenson, 79 Cal. Dec. 141.

So in the instant case how can petitioner more positively show prejudice when the very information he was seeking on cross-examination was denied him by the action of the Government?

"The power of cross-examination is one of the most efficacious tests which is known to the law for the discovery of truth. To deprive the defendant of this right in a proper case * * * is error for which a judgment of conviction should be reversed."

People v. Westlake, 124 Cal. 452, 459.

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3. THE REFUSAL TO GIVE PETITIONER'S REQUESTED INSTRUCTION NO. 10.

It will be recalled that petitioner's requested Instruction No. 10 was one which in substance stated that a finding that any promises made by defendant were not fulfilled or that any representations as to future events did not occur as represented in and of itself was not sufficient to establish the fact that the

defendant did not intend to fulfill such promise or that he knew such representation to be false. This instruction would further have told the jury that there had to be evidence in the case to establish the fact that defendant knew at the time of making any such promise or representation that it would not be fulfilled which evidence had to be something in addition to mere proof that such promise was not kept or such representation not fulfilled (R. p. 401).

The majority opinion of the Circuit Court attempts to justify the refusal to give this requested instruction on the ground that it was substantially contained in other instructions given by the Court (R. p. 502). The Government attempts to uphold the majority opinion on like grounds. The majority opinion has misconstrued the language and purpose of the requested instruction as is evident from a mere reading of the opinion which states:

> "The requested instruction states that the evidence must establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled whereas the court properly instructed the jury that, if when the promise was made the defendant had no intention of performing, such promise was fraudulent" (R. p. 502).

The requested instruction did not deal with the proposition of law that the defendant must have known at the time of making such promise or representation that it would not be fulfilled but contained the proposition of law, material to petitioner's defense, that mere proof of the failure to keep a promise or

to fulfill a representation did not supply the proof necessary to establish that petitioner did not intend to fulfill such promise at the time it was made. The proposition contained in the requested instruction was entirely different from that given by the Court anywhere in its charge.

The charge of the Court is set forth in full from pages 379 to 398 of the record. It is true the Court instructed the jury that no promise or representation as to the future could be criminally false unless made with the intent of never being fulfilled; but nowhere in the charge did the Court instruct the jury along the lines set forth in the requested instruction.

We have set forth in our brief, in support of our petition herein, from pages 48 to 54, various cases which hold that a defendant in a criminal case is entitled to have the jury specifically instructed on all questions of law applicable to his defense. We have further pointed out therein it was part of petitioner's defense that if any promise or representation as to the future was made by him it was made with intent on his part to fulfill the same. It therefore became most important that the jury be instructed as requested.

In the absence of such instruction the jury could and undoubtedly did find that because said promise and representation as to the future were made by Alford and not fulfilled, such non-fulfillment established the fact that Alford never had any intention of performing or fulfilling such promises or representations.

To demonstrate how prejudicial to petitioner was the failure to give this instruction, we call the Court's attention to that part of the charge which reads as follows (R. p. 393):

> "Every man is presumed to intend the natural and probable consequences of his acts."

In the absence of the requested instruction and in view of the foregoing portion of the Court's charge the jury could have arrived at no other conclusion and pursued no other course of reasoning but the one which lead to finding that any promises or representations made by petitioner were made without intent of fulfilling or performing them because petitioner was presumed to intend the natural and probable consequence of his acts and because the evidence showed that such promise and representations were not fulfilled.

A similar situation arose in the case of *Hibbard v. United States*, 172 Fed. 66 (C. C. A. 7) where the Court instructed the jury, in the same kind of prosecution, as follows: "The law presumes that every man intends the natural, legitimate and necessary consequence of his acts." In reversing the case for the giving of this instruction the Circuit Court said (172 Fed. 72):

> "Of course, no such rule is applicable to the case at bar; and it appears from other instructions, submitting the issue of intent to determination by the jury from all the evidence, that the court intended no such conclusive effect to be understood from the above-mentioned instruction. Nevertheless, the unqualified terms so stated, as

a presumption of law, are erroneous, and their liability to mislead the jury is undoubted, irrespective of the contention on behalf of the plaintiff in error that no presumption of specific intent to defraud—which is the statutory offense charged in the indictment—arises from the fact that fraud may appear to be the natural consequence of the act committed. The distinction between presumptions of law and mere inferences of fact is not observed in this instruction; and, assuming it to intend a disputable presumption of law (1 Greenleaf on Ev. sec. 33), its effect must be to cast the burden upon the accused to disprove fraudulent intent, which is unauthorized. McKnight v. United States, 115 Fed. 972, 54 C. C. A. 358, and authorities cited."

Further on on the same page of the reported case the Circuit Court deals with the proposition that no matter how fraudulent a scheme may turn out to be, or that certain results occurred, such fraud or results could not establish, as a matter of law, the intent with which any things were done by the defendant:

"The statute (section 5480) prescribes as the offense devising and executing a scheme with intent to defraud. While the fraudulent character of the scheme, as executed, is necessarily charged and must be established by proof, conviction cannot rest on the fact that the scheme is fraudulent in its operation, for commission of the statutory offense requires specific intent on the part of the accused to defraud the patrons of the Institute. Durland v. United States, 161 U. S. 306, 313, 16 Sup. Ct. 508, 40 L. Ed. 709. In other words, however fraudulent in tendency or

fact the scheme may appear to be, neither the scheme nor its execution is punishable under the statute, unless the evidence, direct or circumstantial, establishes as well (and beyond reasonable doubt) the essential ultimate fact charged as the violation—that it was devised and carried out by the accused with intent to defraud the patrons of the Institute, as described in the indictment. Proof of the nature of the scheme and its effect upon the patrons constitutes circumstantial evidence, together with the facts appearing in its execution, from which the intent of the accused in such execution may legitimately be inferred, in the light of all circumstances bearing upon the crucial issue. The accused, however, is entitled to the benefits of the presumption of innocence and good faith, created by the law in his favor, and to have the jury instructed accordingly, in terms which involve no doubt of their meaning, so that the question of intent is thus presented, as an issue of fact alone, upon which the accused must be acquitted, unless both presumption of good faith and evidence introduced in his favor are overborne by direct and circumstantial proof, establishing beyond reasonable doubt his intent to defraud the patrons by the efforts and means employed in use of the mails.

Although the cardinal rules (a) that innocence must be presumed and (b) that intent to defraud must be proven beyond reasonable doubt are repeatedly stated in the instructions, we are of opinion that the above-mentioned instruction as to intent presumed by law was erroneous and confusing upon that issue, and not cured (as counsel for the government contends) by the other

instructions referred to. The intent may rightly be inferred from the circumstances in evidence; but it is an inference of fact—not a presumption of law."

No exception was taken to the portion of the Court's charge stating that a man is presumed to intend the natural and probable consequences of his acts, but such instruction having been given we call it now to this Court's attention to demonstrate the prejudice that resulted to petitioner in not giving the instruction requested. As pointed out above all the instructions, as given by the trial Court, told the jury that it was necessary to prove that any promises or representations made by petitioner were false and known by petitioner to have been false (R. p. 385) and that the intent of the defendant was the very gist and substance of the fraud, without which it would be impossible to devise a scheme to defraud (R. p. 382); that good faith and lack of intent to defraud constitute a defense and any promise or representation relating to the performance of some act in the future does not constitute a false or fraudulent pretense, representation or promise, even though such act was not performed by the defendant, if, at the time of making, the defendant was of the opinion and honestly believed that he could and would perform the same (R. pp. 391-392); that every man is presumed to intend the natural and probable consequence of his acts (R. p. 393). Under these instructions the jury was told, in substance, that no promises or representa-

made with a knowledge of their falsity and an intent not to perform them; nevertheless, he was presumed to intend the natural and probable consequences of his act. This was the equivalent of stating that if any promises were not fulfilled or performed he was presumed to have made them without any intent of fulfilling or performing them. If the requested instruction had been given the error in the Court's charge would have been cured. The jury would have been specifically informed that mere proof of the failure to fulfill or keep a promise or representation did not constitute proof that such promise or representation was made with intent not to fulfill or keep it. Such is the law as announced in the case of *Hibbard v. United States*, supra, and in the case of *Post v. United States*, 135 Fed. 1.

The majority opinion, upholding the refusal to give this requested instruction is in direct conflict with the weight of authority, the two foregoing cases, and the rules of law as announced in the cases from this Court and from the Circuit Courts of Appeal from the Fifth, Sixth and Eighth Circuits as set forth on pages 51-52 of our brief in support of our petition herein.

CONCLUSION.

We respectfully submit that each of the points raised in our petition for a writ of certiorari herein and argued and discussed in our brief in support thereof and in our supplemental brief are well taken

and that the majority opinion of the Circuit Court of Appeals is in direct conflict with weight of authority and of prior decisions of this Court and of other Circuit Courts of Appeal.

Dated, San Francisco,
December 10, 1930.

Respectfully submitted,
THOMAS M. FOLEY,
Attorney for Petitioner.

LEO R. FRIEDMAN,
Of Counsel.

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No. 370

In the Supreme Court of the United States

OCTOBER TERM, 1930

J. W. ALFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The charge of the trial court appears at R. 379–398. The majority opinion of the Circuit Court of Appeals (R. 492), and the dissenting opinion (R. 503), are reported in 41 F. (2d) 157.

JURISDICTION

The judgment sought to be reviewed was entered on May 26, 1930. (R. 506.) A petition for rehearing was denied on June 26, 1930. (R. 507.) The petition for certiorari was filed on August 21, 1930. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether in the trial of an indictment for using the mails to defraud, the scheme to defraud, as charged in the indictment, was sufficiently proved when the court withdrew from the jury all evidence relative to certain allegations of the indictment.

2. Whether reversible error was committed in denying the petitioner's counsel the right to inquire of a witness on cross-examination as to his "address and place of residence."

3. Whether reversible error was committed in refusing to give to the jury a requested instruction to the effect that there must be evidence to establish the fact that the defendant knew at the time of making promises that they would not be fulfilled, when, as the Government contends, this point was fully covered elsewhere in the charge.

4. Whether the court erred in instructing the jury that if the petitioner made false representations as to his ownership of land, "a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations."

STATEMENT

The petitioner was convicted in the United States District Court for the Southern District of California under an indictment (R. 3) charging him with using the mails in furtherance of a scheme to defraud. The scheme which the indictment charged consisted in selling to the public parcels of land

which the petitioner did not own, with the representation that he would spend $300,000 in drilling oil wells upon the entire parcel, the fruits of which would inure to the purchasers.

The District Court imposed sentences aggregating five years imprisonment and fines of $2,000. (R. 70–71.) Petitioner appealed to the Circuit Court of Appeals for the Ninth Circuit, and that court, with one judge dissenting, affirmed the judgment of the court below. (R. 506.)

ARGUMENT

I

One of the plans set forth in the indictment related to a so-called "Ten-Way-To-Win-Syndicate." After the Government's evidence as to this part of the scheme was all in, the petitioner moved to strike it out because this evidence did not show that the "Ten-Way-To-Win-Syndicate" was a part of the original scheme. The court at that time overruled the motion. (R. 133–134.) Later on the court reversed its ruling and ordered the testimony excluded, and in so doing said (R. 148):

> After a more thorough and careful examination of the indictment in this case, I have decided to change my ruling on defendant's motion to exclude all testimony with reference to the Ten-Way-To-Win-Syndicate. The motion will be sustained, and all testimony of Mr. Brubaker and any other testimony that may have been offered and admitted in that connection will be excluded,

> and the jury will not consider it for any purpose. That testimony, in my judgment, is certainly not admissible on the direct examination; whether it will be in rebuttal is a matter that I do not know and pass upon. That testimony might possibly be admissible as tending to show the means by which the alleged original scheme was carried out, but the indictment alleges that it was a part of the alleged original scheme, while the testimony, in my judgment, does not so show. So you may, at least during the direct examination, bear that in mind in offering your testimony.

It is the contention of the petitioner that in the trial of a case involving the use of the mails to defraud, it is incumbent upon the Government to prove the scheme to defraud precisely as laid in the indictment, and that the action of the trial court described above amounted to an amendment of the indictment without the action of a grand jury.

We submit that the trial court did not amend or alter the indictment as in *Ex parte Bain*, 121 U. S. 1, upon which the petitioner relies, but merely ruled that there was a failure of proof as to a portion of the allegations of the indictment. This action was taken at the instance of the petitioner, not the Government. The indictment set forth other plans, and conviction under it did not require proof of every plan which it mentioned. The action of the trial court finds ample support in

the decision of this Court in the analogous case of *Salinger* v. *United States*, 272 U. S. 542, where it was said (p. 548):

> The contention that the court, by withdrawing from the jury a part of the charge as without support in the evidence, amended the indictment and thereby prevented it from longer serving as an accusation by a grand jury is on no better plane than the others. The indictment was not amended, either actually or in legal effect. It remained just as it was returned by the grand jury, and the trial was on the charge preferred in it and not on a modified charge. * * * The scheme to defraud as set forth in the indictment was manifold in that it comprehended several relatively distinct plans for fleecing intended victims. What the court withdrew from the jury was all of these plans but one. Thus the court ruled that the evidence while tending to sustain the charge as respects one of the plans did not give it any support as respects the others. Whether this was right or wrong—as to which we intimate no opinion—it did not work an amendment of the indictment and was not even remotely an infraction of the constitutional provision that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." * * *

Further support for the decision below is found in *Silkworth* v. *United States*, 10 F. (2d) 711,

714–715 (C. C. A. 2nd), in which this Court refused certiorari. 271 U. S. 664. See also *Benham* v. *United States*, 13 F. (2d) 558, 561 (C. C. A. 6th), certiorari denied, 273 U. S. 721.

II

It is next asserted that the trial court erred in refusing to permit a witness on cross-examination to be interrogated as to where he lived. In claiming the right to have the witness answer, counsel for petitioner at the trial said (R. 194):

> Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have the right to elicit that on cross-examination. I may say that this is the first witness the Government has called that they have not elicited the address from.

Later, upon further argument of the matter, counsel for petitioner stated that "it is my impression, that he [the witness] is here in the custody of the Federal authorities. If that is so, I have a right to show that for the purpose of showing whatever bias or prejudice he may have." (R. 198.)

Although we question the correctness of the ruling, it would hardly seem to constitute reversible error, as it is not shown that prejudice resulted. To a considerable extent the bounds of such cross-examination must be left to the discretion of the court. *Blitz* v. *United States*, 153 U. S. 308, 312.

The majority of the Circuit Court of Appeals below thus disposed of the point (R. 499, 500):

> The purpose of such evidence is to identify the witness and to some extent give proper background for the interpretation of his testimony. In this case, however, the counsel indicated his purpose to use the information for the purpose of discrediting the witness. It is part of the obligation of a trial judge to protect witnesses against evidence tending to discredit the witness unless such evidence is reasonably called for by exigencies of the case. A witness is not on trial and has no means of protecting himself. Here it was evident that the counsel for the appellant desired to discredit the witness, without so far as is shown, in any way connecting the expected answer with a matter on trial. If it had been contended that the witness was in custody because of his participation in the transaction with which the appellant was charged, and if it was sought to show that he was testifying under some promise of immunity, it would undoubtedly have been prejudicial error to have excluded such testimony, but counsel avowed no such purpose, and indicated that the proposed question was merely in pursuit of a fishing expedition by which he hoped to discredit the witness. The witness was examined at great length concerning his relation to the appellant and great latitude was accorded in that examination.

III

The petitioner next contends that the court erred in refusing to give to the jury a requested instruction, No. 10 (R. 401), to the effect that there must be evidence to establish the fact that the defendant knew at the time of making promises that they would not be fulfilled.

The Court's refusal was thus stated (R. 402):

> Refused. Substantially contained in general and requested instructions. Repetition.

The portions of the charge as given, appearing at pages 382, 385, 387–392 of the Record, make it plain that the substance of the requested instruction was given. The following part of the charge is typical (R. 382):

> In this case the intention of the defendant is the very gist and substance of the fraud which must necessarily be embodied in the scheme or artifice as a foundation for the violation of the law. Without such fraudulent intention it would be impossible to devise a scheme or artifice to defraud.

The majority of the Circuit Court of Appeals thus disposed of the point (R. 502):

> As to instruction No. 10 referred to on page 72 of appellant's brief, the court did give substantially this instruction. The requested instruction states that the evidence must establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled, whereas the court properly instructed the

> jury that, if when the promise was made the defendant had no intention of performing, such promise was fraudulent.

See also *Sugarman v. United States*, 249 U. S. 182, 185.

IV

Petitioner's final complaint attacks that part of the charge to the jury which states, in substance, that if petitioner "did make false and fraudulent representations and assurances for the purpose of deceiving persons with respect to his ownership of the land * * * then a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations." (R. 386.) The petitioner's counsel objected to this instruction on the ground that the indictment contained no allegations that misrepresentation as to the ownership of the land was a part of the scheme to defraud.

The majority of the Circuit Court of Appeals below thus disposed of the point (R. 502–503):

> "The court also instructed the jury that if the defendant devised the scheme set forth in the indictment and made false and fraudulent representations for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, Oklahoma, etc., a subsequent ultimate intent to reimburse the investors by no means furnished a condonation or legal excuse for false representations, but such fact could be considered by the jury in determining

whether there was an intent to defraud. Appellant complains of this instruction on the ground that it is not alleged in the indictment that the appellant misrepresented his title. This statement concerning the indictment is true but the court elsewhere instructed over and over that it was necessary to prove the allegation of the indictment beyond a reasonable doubt in order to convict the appellant. The allegations in the indictment concerning title were quoted in the instruction. The jury were therefore properly instructed as to what proof was necessary to substantiate the charge in the indictment. The instruction with reference to misrepresentation concerning title was for the purpose of informing the jury that an ultimate intent to repair the fraud would not excuse fraud. That this instruction incorrectly assumed that there was an affirmative charge of misrepresentation as to title, is, in the light of this fact, not significant.

While it is true, as stated by the Circuit Court of Appeals, that the indictment did not charge the making directly of false representations with respect to the ownership of the land, the indictment did contain the following allegation (R. 4):

> It was further a part of said scheme and artifice that the defendant would not exercise the option to purchase any of the land hereinbefore described nor to obtain title to any part thereof.
>
> It was further a part of said scheme and artifice that the defendant should and he did,

without having title thereto, sell and offer for sale parcels and tracts of land from and out of the tract of land hereinbefore described and to which he had an option as aforesaid.

There is, therefore, at least an implication of ownership in the sales made.

Petitioner, as a witness in his own behalf, was examined at length regarding his alleged title to the property involved (R. 298 *et seq.*), and there was testimony of subsequent refunding and transferring purchasers to other projects (R. 158, 167–168, 175, 181, 182). We submit that in view of other portions of the charge the jury could not have been misled. *Seaboard Air Line* v. *Padgett*, 236 U. S. 668, 672.

CONCLUSION

Petitioner raises no question of merit deserving of review on certiorari, and his petition should therefore be denied.

Respectfully submitted.

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SEPTEMBER, 1930.

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CHARLES ELMORE CROPLEY
Clerk

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BRIEF FOR THE UNITED STATES

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OPINION BELOW

The majority opinion of the Circuit Court of Appeals (R. 492) and the dissenting opinion (R. 503) are reported in 41 F. (2d) 157.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 26, 1930. (R. 506.) A petition for rehearing was denied on June 26, 1930. (R. 507.) Petition for certiorari was filed August 21, 1930, and granted October 20, 1930, pursuant to the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether in the trial of an indictment for using the mails to defraud, the scheme to defraud, as charged in the indictment, was sufficiently proved although the court withdrew from the jury all evidence relative to certain allegations of the indictment.

2. Whether reversible error was committed in denying the petitioner's counsel the right to inquire of a witness on cross-examination where he then lived.

3. Whether reversible error was committed in refusing to give to the jury a requested instruction to the effect that there must be evidence to establish the fact that the defendant knew at the time of making promises that they would not be fulfilled, when, as the Government contends, this point was fully covered elsewhere in the charge.

4. Whether, in view of the fact that the indictment did not specifically allege that petitioner made false representations as to ownership of land, the court erred in instructing the jury that if the petitioner made false representations as to his ownership of land, a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of Cali-

fornia on four counts of an indictment charging him with using the mails in furtherance of a scheme to defraud. (R. 3, 68–69.)

The District Court imposed a sentence of five years' imprisonment and a fine of $1,000 on the first count, imprisonment of two years and a fine of $1,000 on the second count, and imprisonment of two years (without fine) on the fifth and sixth counts, the terms of imprisonment on all counts to run concurrently. (R. 406.) The Circuit Court of Appeals affirmed the judgment, stating that it was unnecessary to consider the evidence as to the fifth and sixth counts, as "the sentences thereon run concurrently with the sentence under counts 1 and 2 and are for a shorter period." (R. 503.) The contentions of petitioner relate equally to both counts 1 and 2.

The object of the scheme, the indictment charged, was to obtain money as the purchase price of parcels of land represented by the petitioner as potential oil land. The indictment charged many details of the scheme to defraud. It alleged that the petitioner intended to sell the parcels in question without having title thereto; that he had an option on the land but that he did not intend to exercise it; that he represented that he would spend $300,000 in drilling oil wells on the land, although he really did not intend to drill any oil wells; and that he stated that he would deliver to the pur-

chasers deeds giving title to the land although he did not intend to deliver any deed.

The indictment also alleged that it was part of the scheme of the petitioner to represent to his victims after they had made the purchases that he would permit them to exchange the land bought by them for interests in a syndicate owning other tracts of land, although he did not intend to obtain any such other tracts. Upon motion of the petitioner, the trial court eliminated all testimony as to the representations regarding this syndicate on the ground that the evidence did not show that the plan in regard to it was formulated at the same time as the original plan to defraud.

There was evidence tending to show that petitioner obtained an option to purchase for $307,200 a thirty thousand acre tract of land in Oklahoma, to be split up into acre tracts and sold to the public as potential oil lands. (R. 82, 104.) Of the purchase price he made only the first payment—$25,000—and he made that with borrowed money which was never repaid. (R. 83, 85, 90, 181, 356.) He was compelled to deed his entire interest to the person who made the loan. (R. 318–319.) Purchasers from him, on completing their instalment payments, were unable to get deeds. (R. 104, 109, 146–147, 149, 151, 152–153, 161, 172, 174, 212, 219, 235.) There were also false promises as to early drilling of oil wells and as to the expenditure of a large sum of money in such activity and in improv-

ing the land. (R. 122, 140, 147, 150, 151, 159, 163, 169, 171, 180, 211, 218.) Petitioner permitted his sales campaign to continue when he knew that his enterprise had collapsed. (R. 128.)

As the Circuit Court of Appeals said (R. 494):

> * * * The evidence shows without any conflict that the appellant made the false representation that he was actually drilling a well. The jury were justified from the evidence in concluding that the appellant never intended to drill the well. They were also justified in concluding from the evidence that the appellant did not intend to convey the land he agreed to sell. * * *

SUMMARY OF ARGUMENT

1. The failure of the Government to prove certain allegations of the indictment as to the scheme to defraud does not invalidate the conviction. In prosecutions for mail frauds under Section 215 of the Criminal Code, the gist of the offense is the use of the mails. The fraudulent scheme is not the substantive offense, and it need be alleged only with sufficient particularity to apprise the defendant fairly of the nature of the scheme charged. Upon the trial the Government is not required to prove all of the alleged particulars and manifestations of the scheme, but only enough of them to establish a substantial scheme or artifice. A failure of proof as to a particular factual element of the pleaded scheme does not amount to a conviction upon a changed or amended indictment.

2. Reversible error was not committed by the trial court in sustaining an objection to the question, "Where do you live?" asked by petitioner's counsel in cross-examination of a witness. That question is not a sufficient basis upon which to predicate an attack upon the credibility, prejudice, or bias of the witness. Nor can such a question form a proper basis for an attempt to show that the witness was then in the custody of the Federal authorities. The fact—if it was a fact—that the witness was in the custody of the Federal authorities did not affect his credibility or show bias on his part. Moreover, the extent of an attack upon credibility, upon cross-examination, is always in the sound discretion of the trial court, which discretion is not subject to attack upon appeal unless grossly abused. No such abuse appears here, and no prejudice is shown to exist by reason of the refusal of the trial court to permit the question to be answered.

3. Reversible error was not committed by the trial court in refusing to give the jury a particular instruction requested by the defendant, to the effect that the fact that a promise was not fulfilled by petitioner was not sufficient to establish that he did not intend to fulfill the promise. The charge of the court, considered as a whole, fully and clearly covered the question of intent.

4. The reference in the charge of the court to a theory of fraudulent representations based upon alleged *ownership* of land involved is not reversible

error, first, because the entire charge clearly and fully apprised the jury of the elements of the offense set forth in the indictment and the proofs; and secondly, because the indictment, in effect, charges that the petitioner had represented that he would become the owner of the land which he was attempting to sell under his fraudulent scheme.

ARGUMENT

I

IT WAS NOT NECESSARY TO PROVE ALL DETAILS OF THE SCHEME TO DEFRAUD PRECISELY AS LAID IN THE INDICTMENT

The indictment in this case (R. 3–15) follows the form of indictment which is commonly used in prosecutions for using the mails to defraud. At the outset, it charges that the defendant "did devise a scheme and artifice to obtain money and property by means of false and fraudulent pretenses, representations and promises." It then proceeds to identify the scheme and artifice by recitals of particulars. Each of these particulars is referred to in the indictment as a further "part of said scheme and artifice" to defraud.

The first eight particulars of the scheme set forth in the first count (R. 3–9) may be summarized as follows: Petitioner, having secured an option on some Oklahoma land, which he never intended to exercise, represented that the land was potential oil land, that he intended to expend approximately

$300,000 in drilling oil wells on it, and that he would give deeds of lots to purchasers from him, all of which representations were intentionally false and were made for the purpose of defrauding persons who might be induced to pay money to petitioner in reliance on such representations. The last four particulars set forth in the indictment allege that petitioner as "a part of said scheme and artifice," intended, in effect, to induce the already defrauded purchasers to transfer their supposed investments to another investment sponsored by petitioner, known as the "Ten Way to Win Syndicate," in connection with which he would represent that the "Ten Way to Win Syndicate" was organized for the protection of the purchasers, and would enable the purchaser to own lands upon which petitioner intended to drill oil wells, at his own expense.

Upon the trial, the evidence showed that petitioner's idea in advancing the "Ten Way To Win Syndicate" proposition was formulated by him after the date of the concoction of the scheme embracing the first eight particulars referred to above. Petitioner, therefore, moved to strike out such evidence, upon the ground that it could not have been part of the original scheme to defraud. The court granted the motion, and withdrew the evidence of the "Ten Way To Win Syndicate" proposition from the jury, and the case proceeded. Petitioner was convicted upon evidence amply supporting the

allegations of the indictment as to the first eight particulars referred to above.

The petitioner contends that as the "Ten Way To Win Syndicate" proposition was charged in the indictment to have been "a part of said scheme and artifice," he was in effect tried on a charge different from that set forth in the indictment, in violation of the provisions of the Fifth Amendment.

The contention is neither novel nor sound. It grows out of a failure to appreciate the nature of the crime laid in the pertinent statute, Section 215 of the Criminal Code (p. 29, *infra*). The gist of the offense is the use of the mails in furtherance of a scheme to defraud. The scheme itself is not the substantive offense, and the rule, therefore, is that the scheme need not be set forth with all the particularity required in charging a substantive offense, but need be described only with sufficient particularity to apprise the defendant of the nature of the scheme with which he is charged. *Mathews* v. *United States* 15 F. (2d) 139, 143 (C. C. A. 8th); *Redmond* v. *United States* (C. C. A. 1st), 8 F. (2d) 24; *Savage* v. *United States* (C. C. A. 8th), 270 Fed. 14; *Gardner* v. *United States* (C. C. A. 8th), 230 Fed. 575; *Horn* v. *United States* (C. C. A. 8th) 182 Fed. 721.

Obviously the pleader in setting forth such a scheme should include the various particulars which, upon his information, he believes that the Government may prove for the purpose of establishing

that there was a scheme to defraud. Owing to the ramifications into which such schemes extend, it is impossible for the pleader before the trial to select with absolute certainty those of the numerous intentions and acts which the prosecution will be able to prove. To require this would place an insuperable burden upon the Government in such prosecutions.

We contend that the action of the trial court did not operate in effect, as petitioner contends, as an amendment to the indictment. In *Salinger* v. *United States*, 272 U. S. 542, 548–549, a case involving a similar situation, this Court said:

> The contention that the court, by withdrawing from the jury a part of the charge as without support in the evidence, amended the indictment and thereby prevented it from longer serving as an accusation by a grand jury is on no better plane than the others. The indictment was not amended, either actually or in legal effect. It remained just as it was returned by the grand jury, and the trial was on the charge preferred in it and not on a modified charge. After the evidence was put in, the accused, believing that part of the charge had no support in the evidence, requested that that part be withdrawn from the jury; and the court acceded to the request when the final instructions were given. The scheme to defraud as set forth in the indictment was manifold in that it comprehended several relatively dis-

> tinct plans for fleecing intended victims. What the court withdrew from the jury was all of these plans but one. Thus the court ruled that the evidence while tending to sustain the charge as respects one of the plans did not give it any support as respects the others. Whether this was right or wrong—as to which we intimate no opinion—it did not work an amendment of the indictment and was not even remotely an infraction of the constitutional provision that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." *Goto* v. *Lane*, 265 U. S. 393; *State* v. *Evans*, 40 La. Ann. 216, 218. And see *Crain* v. *United States*, 162 U. S. 625, 636; *Hall*. v. *United States*, 168 U. S. 632, 638–639. In the case of *Ex Parte Bain*, 121 U. S. 1, on which the accused relies, there was an actual amendment or alteration of the indictment to avoid an adverse ruling on demurrer, and the trial was on the amended charge without a resubmission to a grand jury. The principle on which the decision proceeded is not broader than the situation to which it was applied.

The same result was reached in *Silkworth* v. *United States* (C. C. A. 2d), 10 F. (2d) 711.

Although it is necessary to prove a sufficient number of the elements of the scheme to show its existence, it has often been held that no particular element need be proved if the elements which are proved are sufficient to establish the scheme. *Lewis*

v. *United States* (C. C. A. 9th), 38 F. (2d) 406, 409–410; *Cowl* v. *United States* (C. C. A. 8th), 35 F. (2d) 794, 798; *Kaplan* v. *United States* (C. C. A. 2d), 18 F. (2d) 939, 943; *Mathews* v. *United States* (C. C. A. 8th), 15 F. (2d) 139, 143–144; *Benham* v. *United States* (C. C. A. 6th), 13 F. (2d) 558, certiorari denied, 273 U. S. 721. See also *Ford* v. *United States*, 273 U. S. 593, 602.

The contention of the petitioner that such cases as *Ex parte Bain*, 121 U. S. 1; *Naftzger* v. *United States* (C. C. A. 8th), 200 Fed. 494; *United States* v. *Dembowski* (D. C., E. D. Mich.), 252 Fed. 894, are controlling here, illustrates the error into which he has fallen. These cases are not prosecutions under the mail fraud statute. The inapplicability of such cases is pointed out in *Mathews* v. *United States* (C. C. A. 8th), 15 F. (2d), 139, 144, and the inapplicability of the case *Ex parte Bain*, *supra*, in particularly pointed out by this Court in the extracts from its opinion in the *Salinger case*, *supra*.

II

REVERSIBLE ERROR WAS NOT COMMITTED BY THE TRIAL COURT IN SUSTAINING AN OBJECTION TO THE QUESTION "WHERE DO YOU LIVE?" ASKED BY PETITIONER'S COUNSEL IN CROSS-EXAMINATION OF A WITNESS

The petitioner's specification of error on this point depends upon proceedings shown in the following extracts from the record (pp. 194–195, 198–199, 206):

Q. 1927. Where do you live, Mr. Bradley?

Mr. ARMSTRONG. That is objected to as immaterial and not proper cross-examination.

The COURT. I can not see the materiality.

Mr. FRIEDMAN. Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have the right to elicit that on cross-examination. I may say that this is the first witness the Government had called that they have not elicited the address from.

The COURT. I will sustain the objection.

Q. By Mr. FRIEDMAN. What is your business, Mr. Bradley?

A. My profession is an accountant, public accountant.

Q. What is your occupation now?

A. I am not doing anything at the present time on account of this case.

Q. On account of this case?

A. Yes.

Q. Do you live in Los Angeles?

Mr. ARMSTRONG. That is objected to as immaterial and invading the Court's ruling.

The COURT. I have ruled on that question.

Mr. FRIEDMAN. I will temporarily pass on to something else. I would like leave to submit authorities on my right to develop that on cross-examination. I haven't them with me.

The COURT. All right.

* * * * *

The jury were thereupon excused by the court until 9:30 o'clock on the morning of

July 24, 1929, whereupon the jury retired after which the following proceedings were had relative to the materiality of the testimony, as to the residence and place thereof of Cameron Bradley.

The COURT. So ordered. In what particular do you think that evidence is material?

Mr. FRIEDMAN. I think it is material for this purpose, first, not only on the general grounds I urged in asking the question, but on the additional grounds that I have been informed and caused to believe that this witness himself is now in the custody of the Federal authorities.

Mr. ARMSTRONG. You mean Mr. Bradley? You mean by the Federal authorities here?

Mr. FRIEDMAN. I don't know by what authorities, but that is my impression, that he is here in the custody of the Federal authorities. If that is so, I have a right to show that for the purpose of showing whatever bias or prejudice he may have.

The COURT. No; I don't think so. If you can prove he has ever been convicted of a felony, that is a different thing.

Mr. FRIEDMAN. I realize that is the rule. I may impeach him if he has been convicted of a felony.

The COURT. No. You may prove that fact as going to his credibility, but you can't merely show that he is detained or in charge of somebody. Everybody is presumed to be innocent until proven guilty.

Mr. FRIEDMAN. It is a violent presumption sometimes, I know.

> The COURT. Your defendant is certainly to be given the benefit of that presumption.
>
> Mr. FRIEDMAN. I have no doubt of that.
>
> The COURT. If that is all you have, I will have to stand on the ruling.

No exception to this ruling was taken at that time. On the following day, after various other matters had been discussed and the witness Bradley had been further cross-examined, counsel for petitioner said (R. 206):

> I would like, if the Court please, our exception noted to the Court's ruling made yesterday after the jury retired to the effect that we could not inquire as to the present address and residence of the witness.
>
> The COURT. Very well.

The exception taken by petitioner's counsel was directed to the ruling of the court made after the jury had retired. In the previous colloquies, he presented two reasons for the question submitted: (1) that the jury is entitled to know who the witness is, where he lives, and what his business is; and (2) that counsel had been informed that the witness was in the custody of the Federal authorities, and that he had a right to show such custody for the purpose of showing bias or prejudice.

The only questions asked by the counsel were "Where do you live?" and "Do you live in Los Angeles?" The ruling was upon objections to these questions which were sustained and the exception was to the exclusion of testimony responsive

to the questions. If what the court said indicated that objections to other questions would be sustained error could not be predicated upon what the court said in the absence of the jury and other questions should have been put to obtain a ruling to which exception could be taken. But no other questions were put. No attempt was made to question the witness as to his prejudice or bias, as to his being actually in custody, or as to whether any promise of immunity had been made. Counsel did not assert that he desired to impeach the witness by showing that his reputation for veracity in the place where he lived was bad, although now contending that this was his aim in asking the question. The contention now made appears to be an afterthought. All that counsel at any time represented to the court was that he wanted to show the *fact* of custody in order to establish bias and prejudice, and the ruling of the court was that he would not be permitted to attack the credibility of the witness by showing merely that he was in the custody of the Federal authorities.

The mere fact of custody would not warrant a jury in depreciating the credibility of a witness. Attacks on the credibility of a witness based on his being a criminal are limited to evidence of convictions, and questions relating to arrests, indictments, and other steps which may be preliminary to conviction are not permitted. *See Glover* v. *United States* (C. C. A. 8th), 147 Fed. 426, 429–430. Even conceding for the sake of argument that the

petitioner was entitled to show that the witness was in the custody of the Federal authorities, we insist that reversible error can be predicated upon the point only when questions appear in the record pertinently calculated to elicit the precise fact. No such questions were asked here.

The extent to which cross-examination may be carried for the purpose of attacking the credibility of a witness is largely in the discretion of the trial court, and such discretion is not ordinarily reviewable by an appellate court. *See Cochran* v. *United States*, 157 U. S. 286; *Blitz* v. *United States*, 153 U. S. 308, 312; *Johnston* v. *Jones*, 1 Black 209, 226; *Saccaro* v. *United States* (C. C. A. 9th), 27 F. (2d) 569; *Lemons* v. *United States* (C. C. A. 8th), 20 F. (2d) 490, 494; *Massaberg* v. *United States*, (C. C. A. 4th), 19 F. (2d) 62; *Edwards* v. *United States* (C. C. A. 8th), 18 F. (2d) 402.

In petitioner's briefs, many cases are cited to establish the right of a defendant to attack the credibility of the witnesses on cross-examination. But the actual decision usually adhered to the rule that the matter was one essentially in the sound discretion of the trial court. In *Yee Kim Yet Lee* v. *United States*, 197 U. S. 274, a new trial was granted by this Court because of the exclusion of a question asked of a witness on cross-examination. But there it clearly appeared that the question related to a matter which vitally affected the credibility of the witness and her motive in acting both as informer and as witness.

We submit that here no such situation exists. Early in the cross-examination of the witness, he testified that petitioner had had him arrested for embezzlement, but that he harbored no ill will or prejudice against petitioner. (R. 197.) Notwithstanding this testimony, petitioner made no effort to amplify his cross-examination by interrogating the witness as to promise of immunity, or to develop prejudice or bias of the witness through proper and appropriate questions.

III

NO ERROR WAS COMMITTED IN REFUSING TO GRANT PETITIONER'S REQUESTED INSTRUCTION NO. 10

The part of requested instruction which petitioner now relies upon is the following (R. 101-102):

> If you find that any promises made by the defendant were not fulfilled by him or that any representations as to future events did not occur as represented this, in and of itself, is not sufficient to establish the fact that the defendant did not intend to fulfill such promise or that he knew such representation to be false. In addition to the proof that such promise was not kept or that such representation was not fulfilled there must be evidence to establish the fact that the defendant knew at the time of making such promise or representation that it would not be fulfilled.

The record discloses that the court refused so to charge upon the ground that it was "substantially contained" in instructions given. (R. 402.)

The following excerpts from the charge make this plain (R. 381-392):

> * * * It is sufficient if you believe from the evidence beyond a reasonable doubt that the defendant devised the scheme as alleged in the indictment, that the same was, and was intended by him to be, a scheme to defraud as alleged, and that in furtherance thereof he sent out the letters or some of them described in Counts 1, 2, 5 and 6 of the indictment, to be sent or delivered through the post office establishment of the United States, whether such scheme was successfully carried out or not.
>
> If a man in good faith enters into a thing, in the honest belief that what he is doing is right and proper, he can not be convicted of crime, and if you believe that the defendant in this case was acting in good faith, he should be acquitted.
>
> * * * * * *
>
> **In this case the intention of the defendant is the very gist and substance of the fraud which must necessarily be embodied in the scheme or artifice as a foundation for the violation of the law. Without such fraudulent intention it would be impossible to devise a scheme or artifice to defraud.**
>
> * * * * *

The words "scheme" and "artifice" as used in the statute include any plan or course of action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property. * * * It is essential only that the scheme formulated be fraudulent in intent as alleged in the indictment.

* * * * *

* * * However, no promise or representation as to the future can constitute a criminally false representation unless it is made with the intent of it never being fulfilled.

* * * * *

It is, therefore, incumbent upon the Government to prove beyond a reasonable doubt the alleged scheme to defraud as set forth in the indictment and the use of the United States mail by the defendant for the purpose of executing ~~or attempting~~ to execute such scheme.

If from a consideration of all the testimony you are not convinced beyond a reasonable doubt that the defendant devised the scheme as set forth in the indictment or that he devised such scheme but ~~did~~ so without intent to defraud any person or persons, or if you are not convinced beyond a reasonable doubt that the defendant used the United States mails for the purpose of executing or attempting to execute such alleged scheme

to defraud, you must return a verdict finding the defendant not guilty.

* * * * *

In determining whether the plan or scheme set forth in the indictment was a plan or scheme to defraud, you are not to take into consideration your personal opinion as to whether said plan or scheme of operation was practicable or impracticable, or whether it was a plan of operation that you personally would or would not have participated in. Even though you are of the opinion that the scheme alleged to have been formulated by the defendant was impracticable or impossible to perform, you must nevertheless return a verdict finding the defendant not guilty should you find that such scheme was formulated by the defendant without any intent to defraud on his part and with his honest belief that the scheme was feasible and practical.

Good faith and lack of intent to defraud on the part of the defendant constitute a complete defense to each and all of the offenses charged in the indictment.

* * * * *

In determining whether or not the Government has proved the scheme to defraud as set forth in the indictment, I instruct you that any promise or representation made by the defendant, directly or indirectly, relating to the performance of some act in the future does not constitute a false or fraudulent pretense, representation or promise, even though such act was not performed

> by the defendant, if at the time of making such pretense, representation or promise the defendant was of the opinion and honestly believed that he could and would perform and fulfill such pretense, representation and promise.

The action of the trial court below in refusing the requested instruction was therefore justified under the applicable rule stated in *Sugarman* v. *United States*, 249 U. S. 182, 185, as follows:

> This passage in the charge clearly embodied the substance of the two requests made by the defendant. The judge was not obliged to adopt the exact language of the instructions requested, *Holt* v. *United States*, 218 U. S. 245, 253; nor was he obliged to repeat the instructions already given in substance. Compare *Bennett* v. *United States*, 227 U. S. 333, 339. * * *

Petitioner contends that the instruction given to the effect that "Every man is presumed to intend the natural and probable consequences of his acts" (R. 393) was "the equivalent of stating that if any promises were not fulfilled or performed he was presumed to have made them without any intent of fulfilling or performing them." (Supplemental brief, p. 29.) We submit that there is no such equation. No exception was taken to that part of the charge just quoted, and the passages of the charge quoted on page 21, *supra*, must have left the correct impression in the minds of the jury.

In this class of cases seldom can the intent of the defendant be proved directly. The circumstances of the case must themselves guide the jury on the question of the defendant's intent. The court here charged (R. 392):

> * * * intent is generally derived from and established by all the facts and circumstances surrounding the person doing the act complained of, as disclosed by the evidence. In order for you to determine in this case the question of intent, you will look at all the evidence, oral and documentary, in the case.

The jury were entitled to consider, on the question of intent, the failure of fulfillment of petitioner's promises.

IV

NO PREJUDICIAL ERROR WAS COMMITTED BY THE TRIAL COURT IN THAT PART OF ITS CHARGE WHICH MENTIONED REPRESENTATIONS REGARDING PETITIONER'S OWNERSHIP OF THE LAND INVOLVED

That portion of the charge which petitioner alleges to be erroneous reads as follows (R. 386):

> If the defendant intended to and did devise the scheme or artifice, as alleged, and did make false and fraudulent representations and assurances for the purpose of deceiving persons with respect to his ownership of the land in Cimarron County, Oklahoma, and of obtaining money by means of such false representations and pretenses, and for the purpose of executing such scheme, or attempting so to do, did place or cause to be placed the

> letters set forth in the several counts of the indictment in any post office or mail box of the United States in Los Angeles County, California, to be sent or delivered by the post office establishment of the United States, as alleged, then a subsequent ultimate intent to reimburse the investor or investors would by no means furnish a condonation or legal excuse for the false representations. It may, however, be considered by the jury in connection with all the other evidence in the case in determining whether or not such representations, if made, were made with the intent to defraud as charged.

Petitioner argues that as the indictment did not specifically allege the making of false representations as to ownership of land, the above language should not have been used in the charge.

In order to obtain a reversal of the judgment below, petitioner must establish not only that the instruction was erroneous, but that it was also prejudicial. In determining the question of prejudice, one must read the court's charge as a whole. If the jury could not have been misled, the error, if any, becomes immaterial. See *Burns* v. *United States*, 274 U. S. 328, 331–332; *Northern Pacific Railroad* v. *Babcock*, 154 U. S. 190, 201.

The charge as a whole gave the jury to understand that they were confined strictly to the fraudulent scheme described in the indictment.

In addition to the excerpts from the charge set forth under Point III of this brief (pp. 19–22, *supra*), the following are typical (R. 389, 390, 391):

> It is, therefore, incumbent upon the Government to prove beyond a reasonable doubt the alleged scheme to defraud as set forth in the indictment and the use of the United States mail by the defendant for the purpose of executing or attempting to execute such scheme.
>
> If from a consideration of all the testimony you are not convinced beyond a reasonable doubt that the defendant devised the scheme as set forth in the indictment or that he devised such scheme but did so without intent to defraud any person or persons, or if you are not convinced beyond a reasonable doubt that the defendant used the United States mails for the purpose of executing or attempting to execute such alleged scheme to defraud, you must return a verdict finding the defendant not guilty.
>
> * * * * *
>
> It is not sufficient that the Government merely prove the physical facts alleged to constitute the scheme to defraud as set forth in the indictment. But in addition thereto the Government must prove beyond a reasonable doubt that such scheme was devised by the defendant with the specific intent to defraud the persons designated in the indictment. * * *
>
> * * * * *

> Before you can find the defendant guilty on any count of said indictment, it must be established to your satisfaction and beyond a reasonable doubt that the identical scheme alleged in the indictment or a substantial portion thereof existed. You can not find the defendant guilty on any count of the indictment upon proof that some other scheme or some scheme other than that alleged in the indictment was devised or formulated by him.

All of the part of the charge just quoted followed the part of which petitioner complains. At the conclusion of the charge the jury asked that the indictment be given them to read, and apparently they took it to their conference. (R. 398–399.)

Moreover, the following allegations in the indictment may fairly be interpreted to charge fraudulent representations in regard to petitioner's ownership of the lands involved in his fraudulent scheme (R. 4–5):

> It was further a part of said scheme and artifice that the defendant would not exercise the option to purchase any of the land hereinbefore described nor to obtain title to any part thereof.
>
> It was further a part of said scheme and artifice that the defendant should and he did, without having title thereto, sell and offer for sale parcels and tracts of land from and out of the tract of land hereinbefore described and to which he had an option as aforesaid.

> It was further a part of said scheme and artifice that he should and did pretend and represent to the persons to be defrauded that should the persons to be defrauded pay for the parcels and tracts of land included in the tract hereinbefore described and to which the defendant had an option as aforesaid, that he, the said defendant, would deliver to the persons to be defrauded a grant deed giving them fee title to the land paid for by them as aforesaid, when in truth and in fact the defendant did not intend to and did not in any instance deliver a deed to any of the persons to be defrauded who had paid the said defendant moneys in exchange for parcels and tracts of land included in the tract hereinbefore described and to which the defendant held an option as aforesaid.

See also false representations contained in circulars described in the indictment. (R. 7.)

The word "ownership," as used by the trial court, may well be regarded as referring to the interest in the land which petitioner gave his victims to understand he would convey to them. Cf. *Bowers* v. *United States* (C. C. A. 9th) 244 Fed. 641, 649.

It would seem to follow that the instruction was not erroneous, and that in no event did prejudice result.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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Solicitor General.
SETH W. RICHARDSON,
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December, 1930.

APPENDIX

STATUTE INVOLVED

Section 215 of the Criminal Code, c. 321, 35 Stat. 1088, 1130-1131, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

U. S. GOVERNMENT PRINTING OFFICE

SUPREME COURT OF THE UNITED STATES.

No. 370.—October Term, 1930.

J. W. Alford, Petitioner, *vs.* The United States. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 24, 1931.]

Mr. Justice Stone delivered the opinion of the Court.

Petitioner was convicted in the District Court for Southern California of using the mails to defraud in violation of § 215 of the Criminal Code. This Court granted certiorari, 282 U. S. —, October 20, 1930, to review a judgment of affirmance by the Court of Appeals for the Ninth Circuit, which upheld certain rulings of the trial court upon the evidence. 41 F. (2d) 157.

In the course of the trial the government called as a witness a former employee of petitioner. On direct examination he gave damaging testimony with respect to various transactions of accused, including conversations with the witness when others were not present, and statements of accused to salesmen under his direction, whom the witness did not identify. Upon cross examination questions seeking to elicit the witness's place of residence were excluded on the government's objection that they were immaterial and not proper cross examination. Counsel for the defense insisted that the questions were proper cross examination, and that the jury was entitled to know "who the witness is, where he lives and what his business is". Relevant excerpts of the record are printed in the margin.[1]

[1]Q. Where do you live, Mr. Bradley?

Mr. Armstrong: That is objected to as immaterial and not proper cross-examination.

The Court: I cannot see the materiality.

Mr. Friedman: Why, I think the jury has a perfect right to know who the witness is, where he lives and what his business is, and we have the right to elicit that on cross-examination. I may say that this is the first witness the Government had called that they have not elicited the address from.

Later, the jury having been excused, counsel for the defense urged, as an "additional" ground for asking the excluded questions, that he had been informed that the witness was then in the custody of the federal authorities, and that such fact might be brought out on cross examination "for the purpose of showing whatever bias or prejudice he may have." But the court adhered to its previous rulings, saying that if the witness had been convicted of a felony that fact might be proved, but not that he was detained in custody.

The Court of Appeals, after stating that it is customary to allow cross examination of a witness with reference to his place of residence, upheld the trial court, saying, p. 160:

"The purpose of such evidence is to identify the witness and to some extent give proper background for the interpretation of his testimony. In this case, however, the counsel indicated his purpose to use the information for the purpose of discrediting the witness. It is part of the obligation of a trial judge to protect witnesses against evidence tending to discredit the witness unless such evidence is reasonably called for by exigencies of the case.

THE COURT: I will sustain the objection.

Q. BY MR. FRIEDMAN: What is your business, Mr. Bradley?

A. My profession is an accountant, public accountant.

Q. What is your occupation now?

A. I am not doing anything at the present time on account of this case.

Q. On account of this case?

A. Yes.

Q. Do you live in Los Angeles?

MR. ARMSTRONG: That is objected to as immaterial and invading the Court's ruling.

THE COURT: I have ruled on that question.

MR. FRIEDMAN: I will temporarily pass on to something else. I would like leave to submit authorities on my right to develop that on cross-examination. I haven't them with me.

THE COURT: All right.

. . . . . .

The jury were thereupon excused by the court until 9:30 o'clock on the morning of July 24, 1929, whereupon the jury retired after which the following proceedings were had relative to the materiality of the testimony, as to the residence and place thereof of Cameron Bradley.

THE COURT: So ordered. In what particular do you think that evidence is material?

MR. FRIEDMAN: I think it is material for this purpose, first, not only on the general grounds I urged in asking the question, but on the additional

A witness is not on trial and has no means of protecting himself. Here it was evident that the counsel for the appellant desired to discredit the witness, without so far as is shown, in any way connecting the expected answer with a matter on trial. If it had been contended that the witness was in custody because of his participation in the transaction with which the appellant was charged, and if it was sought to show that he was testifying under some promise of immunity, it would undoubtedly have been prejudicial error to have excluded such testimony, but counsel avowed no such purpose, and indicated that the proposed question was merely in pursuit of a fishing expedition by which he hoped to discredit the witness. The witness was examined at great length concerning his relation to the appellant and great latitude was accorded in that examination."

Cross examination of a witness is a matter of right. *The Ottawa*, 3 Wall. 268, 271. Its permissible purposes, among others, are that the witness may be identified with his community so that independent testimony may be sought and offered of his reputation for veracity in his own neighborhood, cf. *Khan* v. *Zemansky*, 59 Cal. App. 324, 327ff.; 3 Wigmore, Evidence (2d ed.) § 1368 I. (1) (b);

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grounds that I have been informed and caused to believe that this witness himself is now in the custody of the Federal authorities.

MR. ARMSTRONG: You mean Mr. Bradley? You mean by the Federal authorities here?

MR. FRIEDMAN: I don't know by what authorities, but that is my impression, that he is here in the custody of the Federal authorities. If that is so, I have a right to show that for the purpose of showing whatever bias or prejudice he may have.

THE COURT: No; I don't think so. If you can prove he has ever been convicted of a felony, that is a different thing.

MR. FRIEDMAN: I realize that is the rule. I may impeach him if he has been convicted of a felony.

THE COURT: No. You may prove that fact as going to his credibility, but you can't merely show that he is detained or in charge of somebody. Everybody is presumed to be innocent until proven guilty.

MR. FRIEDMAN: It is a violent presumption sometimes, I know.

THE COURT: Your defendant is certainly to be given the benefit of that presumption.

MR. FRIEDMAN: I have no doubt of that.

THE COURT: If that is all you have, I will have to stand on the ruling.

. . . . . .

MR. FRIEDMAN: I would like, if the Court please, our exception noted to the Court's ruling made yesterday after the jury retired to the effect that we could not inquire as to the present address and residence of the witness.

THE COURT: Very well.

that the jury may interpret his testimony in the light reflected upon it by knowledge of his environment, *Kirschner* v. *State*, 9 Wis. 140; *Wilbur* v. *Flood*, 16 Mich. 40; *Hollingsworth* v. *State*, 53 Ark. 387; *People* v. *White*, 251 Ill. 67, 72ff.; *Wallace* v. *State*, 41 Fla. 547, 574ff.; and that facts may be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased. *Tla-Koo-Yel-Lee* v. *United States*, 167 U. S. 274; *King* v. *United States*, 112 Fed. 988; *Farkas* v. *United States*, 2 F. (2d) 644; see *Furlong* v. *United States*, 10 F. (2d) 492, 494.

Counsel often cannot know in advance what pertinent facts may be elicited on cross examination. For that reason it is necessarily exploratory; and the rule that the examiner must indicate the purpose of his inquiry does not, in general, apply. *Knapp* v. *Wing*, 72 Vt. 334, 340; *Martin* v. *Elden*, 32 Ohio St. 282, 289. It is the essence of a fair trial that reasonable latitude be given the cross examiner, even though he is unable to state to the court what facts a reasonable cross examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them. *Tla-Koo-Yel-Lee* v. *United States*, *supra*; *King* v. *United States*, *supra*; *People* v. *Moore*, 96 App. Div. 56, affirmed without opinion, 181 N. Y. 524; cf. *People* v. *Becker*, 210 N. Y. 274. To say that prejudice can be established only by showing that the cross examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial. *Nailor* v. *Williams*, 8 Wall. 107, 109; see *People* v. *Stevenson*, 79 Cal. Dec. 140; cf. *Brasfield* v. *United States*, 272 U. S. 448. In this respect a summary denial of the right of cross examination is distinguishable from the erroneous admission of harmless testimony. *Nailor* v. *Williams*, *supra*.

The present case, after the witness for the prosecution had testified to uncorroborated conversations of the defendant of a damaging character, was a proper one for searching cross examination. The question "Where do you live?" was not only an appropriate preliminary to the cross examination of the witness, but on its face, without any such declaration of purpose as was made by counsel

here, was an essential step in identifying the witness with his environment, to which cross examination may always be directed. *State* v. *Pugsley,* 75 Ia. 742; *State* v. *Fong Loon,* 29 Ida. 248, 255ff.; *Wallace* v. *State, supra*; *Wilbur* v. *Flood, supra*; 5 Jones, Evidence (2d ed.) § 2366.

But counsel for the defense went further, and in the ensuing colloquy with the court urged, as an additional reason why the question should be allowed, not a substitute reason, as the court below assumed, that he was informed that the witness was then in court in custody of the federal authorities, and that that fact could be brought out on cross examination to show whatever bias or prejudice the witness might have. The purpose obviously was not, as the trial court seemed to think, to discredit the witness by showing that he was charged with crime, but to show by such facts as proper cross examination might develop, that his testimony was biased because given under promise or expectation of immunity, or under the coercive effect of his detention by officers of the United States, which was conducting the present prosecution. *King* v. *United States, supra*; *Farkas* v. *United States, supra,* and cases cited; *People* v. *Becker, supra*; *State* v. *Ritz,* 65 Mont. 180, and cases cited on p. 188; *Rex* v. *Watson,* 32 How. St. Tr. 284. Nor is it material, as the Court of Appeals said, whether the witness was in custody because of his participation in the transactions for which petitioner was indicted. Even if the witness were charged with some other offense by the prosecuting authorities, petitioner was entitled to show by cross examination that his testimony was affected by fear or favor growing out of his detention. See *Farkas* v. *United States, supra*; *People* v. *Dillwood,* 39 Pac. (Cal.) 438.

The extent of cross examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted. *Storm* v. *United States,* 94 U. S. 76, 85; *Rea* v. *Missouri,* 17 Wall. 532, 542-543; *Blitz* v. *United States,* 153 U. S. 308, 312. But no obligation is imposed on the court, such as that suggested below, to protect a witness from being discredited on cross examination, short of an attempted invasion of his constitutional protection from self incrimination, properly invoked. There is a duty to protect him from questions which go beyond

the bounds of proper cross examination merely to harass, annoy or humiliate him. *Great Western Turnpike Co.* v. *Loomis*, 32 N. Y. 127, 132; *Wallace* v. *State*, *supra*; 5 Jones, Evidence (2d ed.) § 2316. But no such case is presented here. The trial court cut off *in limine* all inquiry on a subject with respect to which the defense was entitled to a reasonable cross examination. This was an abuse of discretion and prejudicial error. *Tla-Koo-Yel-Lee* v. *United States*, *supra*; *Nailor* v. *Williams*, *supra*; *King* v. *United States*, *supra*; *People* v. *Moore*, *supra*; cf. *People* v. *Becker*, *supra*. Other grounds for reversal were set up in the petition for certiorari, but we do not find it necessary to pass upon them.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.